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UNITED STATES
BANKRUPTCY COURT
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DISTRICT OF UTAH
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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
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11 In re

12 KATIE LYNN BIRCHARD,

13
14 Debtor,

15 *****

16 Tracy R. Terhune,

17 Plaintiff.

18 v.

19 Katie Lynn Birchard,

20 Defendant
21
22
23
24

CASE NO.: 12-30265-WTT

**DECLARATION OF PLAINTIFF TRACY
R. TERHUNE IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT TO DETERMINE
DISCHARGEABILITY OF DEBT**

(Chapter 7)

Adversary Proceeding No. 12-02552

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DECLARATION

I, Tracy R. Terhune, declare:

1. I am the Plaintiff in the above-captioned matter. I have personal knowledge of the facts contained in this declaration, and if I were called upon to testify I could and would testify competently as to the truth of the facts stated herein.
2. I am an author on silent films pertaining to the silent film actor Rudolph Valentino and published a book in 2004 entitled "Valentino Forever" and in 2006, re-published a book entitled "Valentino the Unforgotten".
3. In or around October of 2009, Defendant owned and/or operated the following internet websites: www.halapickford.com; www.rudolphvalentino.org; www.therudolphvalentinofilmfestival.com; www.forgetthetalkies.com; www.perpetualflapper.blogspot.com
4. In or around October of 2009, Defendant began publishing derogatory statements and accusations about me on her websites, depicting me as mentally ill, sinister, insane and fraudulent, even though Defendant had never personally met me.
5. The false and defamatory statements communicated by Defendant were published and disseminated on the world-wide web. At times, Defendant used the alias name "Hala Pickford" to publish her statements.
6. Defendant has repetitively portrayed me as mentally unstable, dangerous, and as someone who engaged in illegal activity. For example, Defendant published a post on one of her websites, via the World Wide Web, stating that "No links to Donna Hill or the King of Kooky aka Tracy Terhune [Plaintiff]. The dynamic duo have used illegal means in the past and we want no part of it. They have a history of bullying and ripping off fans, and that will just not fly here."

- 1 7. Among other remarks and comments intended to falsely depict me as mentally
2 unstable, Defendant posted on one of her websites, that "Tracy Terhune [Plaintiff] is
3 obsessed with Rudy's death, he profits off of it, he's insane, vindictive, and childish.",
4 and on another occasion referred to me as "Evil Terhune."
- 5
- 6 8. Furthermore, Defendant has repetitively referred to me using the derogatory title of
7 "King Kooky," and published numerous false allegations about my sanity and/or
8 mental well-being. For example, Defendant published a post on one of her websites,
9 via the World Wide Web, stating "...But King Kooky and self-proclaimed Valentino
10 'authority' Tracy Terhune [Plaintiff] is at it again, and it just needs to end. You guys
11 would not believe how dangerous and looney someone [Plaintiff] like this is..."
- 12
- 13 9. Defendant has fabricated stories, and posted them via the World Wide Web, that I
14 stalk and publicly harass her. For example, Defendant published a post on one of her
15 websites, via the World Wide Web, making the false allegation that "I refuse to
16 publicly get into a pissing match with those types anymore; no matter how dangerous
17 or off kilter they [Plaintiff] are (including stalking me to public events where they
18 [Plaintiff] know I am)."
- 19
- 20 10. Defendant further posted "Once I have my restraining order I will feel better. Terhune
21 has an obsessive screw loose especially when it comes to stalking people in public"
22 and also posted "I'm sure Terhune's continual harassment of me will someday come
23 out."
- 24
- 25 11. Defendant further posted that "Terhune had David Bret send me death threats so I
26 would miss the case and lose" and, when referring to David Bret and Tracy Terhune,
27 also posted "yes...they've sent me the death threats and harassed me". None of these
28 statements are true.

- 1 12. Defendant also falsely claimed that I started harassing her family “telling people to
2 send them bombs or something to explode in the mail” and that I said that the
3 Defendant needs to be “done away with” and that “The Valentino Mafia (Tracy
4 Terhune, Bob Birchard, and Stella Grace) have also harassed their fair share of people
5 before...but those people are too terrified of another occurrence and have sworn me to
6 secrecy on it.” I have never made such remarks or threats whatsoever.
- 8 13. Defendant also falsely claimed she had a restraining order against me when she posted
9 on one of her internet blogs “Despite my attempts to get anyone to listen to me that
10 Tracy Terhune was violating his restraining order...no one would listen to me. And
11 I’m mad as hell about it.”
- 13 14. Defendant further falsely claimed that I sabotaged a film festival she arranged. She
14 posted “I was working hard to make The Rudolph Valentino Film Festival come true
15 and it appeared it would: I had a theatre and a sponsor. Terhune and his cronies took
16 that away...”
- 17 15. The truth of the matter was that Defendant did not have sufficient funding for the
18 Rudolph Valentino Film Festival event. Margot Gerber, of the American
19 Cinematheque at the Egyptian & Aero Theatres, indicated in an e-mail message to a
20 friend, Robert Birchard, that “I don’t know Tracy at all. I met with Hala and spoke to
21 her several times on the phone. It became clear to me that she did not have the
22 funding to put on the ambitious event she was proposing so I wished her luck and told
23 her I wasn’t going to take it further with the Cinematheque.”
- 25 16. Defendant also contacted relatives of my friend, Jeanine Villalobos, to warn them
26 about me. Jeanine wrote to me in an e-mail message that Hala Pickford “contacted my
27 Aunt Sylvia to warn her about you (!), among other things...”
28

- 1 17. Despite my attempt to resolve this matter legally and amicably, in response to my
2 repeated requests to Defendant to remove the false and defamatory statements,
3 Defendant chose to instead mock me when she posted the following on one of her
4 websites: "I got a HILARIOUS legal letter from Tracy Terhune [Plaintiff], King of
5 Kookies today (my favorite line had to be about 'hindering his ability for future
6 publishing contracts'".
- 7
- 8 18. Defendant further posted via her website that "He's [Plaintiff] not gonna blackmail or
9 harass me and get away with it just so he can try and keep his fake halo atop his head.
10 Why does he [Plaintiff] want this stuff down? Because it warns people about what a
11 whacked out asshole he [Plaintiff] is." And she also posted: "Tracy, King Kooky, its
12 already personal".
- 13
- 14 19. Defendant also claimed that I was "cracked out" on drugs.
- 15 20. I am not mentally ill or unstable.
- 16 21. I do not have any criminal history or record.
- 17 22. I have never engaged in any illegal or fraudulent activities whatsoever.
- 18 23. I believe there is no doubt that Defendant's actions were personal and deliberate. For
19 example, as stated in one of her postings "Tracy [Plaintiff], King Kooky, its already
20 personal."
- 21
- 22 24. I believe that the Defendant's acts were willful in that Defendant intended to harm me
23 and inflict damage on my reputation and standing in the community and were
24 malicious in that they were wrong, unjustified and totally without any basis.
- 25 25. Attached hereto as Exhibit 1 is a true and correct copy of Defendant's Answer to
26 Plaintiff's Complaint to Determine Dischargeability of Debt filed December 27, 2012.
27
28

- 1 26. Attached hereto as Exhibit 2 is a true and correct copy of the Transcript of Civil
2 Harassment Proceedings conducted on April 12, 2012 in Defendant's Civil
3 Harassment claim against me.
4
5 27. Attached hereto as Exhibit 3 are true and correct copies of screen shots of most of the
6 derogatory statements and accusations posted by Defendant against me on
7 Defendant's various web sites. However, not all of Defendant's web sites, are now
8 currently operational.
9
10 28. Attached hereto as Exhibit 4 is a true and correct copy of my Complaint against
11 Defendant, filed in the Los Angeles Superior Court on March 19, 2010.
12
13 29. Attached hereto as Exhibit 5 is a true and correct copy of the Judgment entered against
14 Defendant on September 17, 2010 and based on my Los Angeles Superior Court
15 Complaint.
16
17 30. Attached hereto as Exhibit 6 is a true and correct copy of the Abstract of Judgment
18 issued against Defendant on March 25, 2011 by the Los Angeles Superior Court.
19
20 31. Attached hereto as Exhibit 7 is a true and correct copy of the Writ of Execution issued
21 March 25, 2011 against Defendant by the Los Angeles Superior Court.
22
23 32. Attached hereto as Exhibit 8 is a true and correct copy of the Bench Warrant issued
24 against Defendant on July 25, 2011 by the Los Angeles Superior Court.
25
26 33. Attached hereto as Exhibit 9 is a true and correct copy of an e-mail messages from Ms.
27 Margot Gerber.
28
34. Attached hereto as Exhibit 10 is a true and correct copy of an e-mail message from
Ms. Jeanine Villalobos.
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1 I declare under penalty of perjury under the laws of the State of California, State of Utah, and
2 the laws of the United States of America that the foregoing is true and correct.
3

4 Date: 6/6/2013
5


Plaintiff, Tracy R. Terhune
11230 Peachgrove Street, #209
North Hollywood, California 91601
(818) 777-6622

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

In re	<u>Katie Lynn Birchard</u>)	Case No.	<u>12-30265-WTT</u>
	Debtor)		
	<u>Tracy R. Terhune</u>)	Chapter	<u>7</u>
	Plaintiff)		
)		
	v.)	Adv. Proc. No.	<u>12-02552</u>
	<u>Katie Lynn Birchard</u>)		
	Defendant)		

ANSWER TO PLAINTIFF'S COMPLAINT TO
DETERMINE DISCHARGEABILITY OF DEBT

COMES NOW Bryan T. Adamson, who does now enter his appearance of counsel for the Defendant, Katie Lynn Birchard in this adversary proceeding filed by the Plaintiff on November 27, 2012. Defendant, through counsel, does hereby answer Plaintiff's Complaint to Determine Dischargeability of Debt.

JURISDICTION AND VENUE

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.

PARTIES

5. Paragraph 5 is admitted.
6. Paragraph 6 is admitted.

BACKGROUND AND FACTS

7. Paragraph 7 is admitted.
8. Paragraphs 8 through 18 are denied.
9. Paragraph 19 is admitted only as far as an attorney was hired by the Plaintiff and that a Civil Complaint for Damages and Injunctive Declaratory Relief was filed on March 19, 2010. All other portions of the paragraph are denied.
10. Paragraph 20 is admitted. However, at the hearing on September 17, 2010, Defendant was unable to appear as she had just been released from the hospital that day after being admitted with moderate

bronchitis. Defendant's Motion to Set Aside Default was denied and she was not able to set forth her defense against the allegations in the original complaint.

11. Paragraphs 21 and 22 are admitted. There is a judgment entered as Plaintiff states.
12. Paragraph 23 is denied for lack of knowledge.
13. Paragraph 24 is denied. Defendant denies all allegations set forth by the Plaintiff in the original Civil Complaint for Damages and Injunctive Declaratory Relief.
14. Paragraph 25 is admitted as an oversight by the document preparer. This schedule can be amended by counsel at this Honorable Court's request.

COUNT 1

NON-DISCHARGEABILITY PURSUANT TO 11 U.S.C. § 523(a)(6)

15. In regards to Plaintiff's second paragraph 21, the Defendant reaffirms her admittance and denials as previously set forth, as they apply to each of the Plaintiff's incorporated paragraphs 1 through 25 as stated.
16. Plaintiff's second paragraph 22 is denied. Defendant asserts that no such claim can exist when she denies the allegations set forth in the original complaint filed in 2010.
17. Plaintiff's second paragraph 23 is admitted. 11 U.S.C. § 523(a)(6) does indeed state that debts "for willful and malicious injury by the debtor to another entity or to the property of another entity" are nondischargeable. However, there is no finding by the trial court that the acts were done willfully or maliciously, therefore 11 U.S.C. § 523(a)(6) does not apply in this case as the Defendant denies the allegations set forth in the original complaint filed in 2010.
18. Plaintiff's second paragraph 24 is denied. Defendant denies that she has any responsibility for the Plaintiff's emotional, professional, and social standings as the Defendant denies the allegations set forth in the original complaint filed in 2010. Further, Defendant believes that the legal fees and costs referenced to by the Plaintiff in this matter are unjustly deserved as she was unable to set forth her defense against the allegations set forth in the original complaint.

Wherefore, the Defendant respectfully requests that this Honorable Court:

1. Require the Plaintiff to provide the evidence required by the burden of proof to the allegations of defamation alluded to in this adversary proceeding;

2. If the burden of proof is not met by the Plaintiff, that the judgment awarded by the Superior Court of the State of California, County of Los Angeles, North Central District to the Plaintiff in the amount of \$100,526.55 be discharged through the Defendant's Chapter 7 bankruptcy;
3. The awarding of attorney's fees and costs;
4. The awarding of any other punitive damages as this Honorable Court deems appropriate; and
5. An injunction be put in place to prevent the Plaintiff and any party representing the Plaintiff from further defamation and harassment of the Defendant.

DATED this 27th day of December, 2012.

Respectfully Submitted,

/s/ Bryan T. Adamson
Attorney for the Defendant

Certificate of Mailing

This is to certify that on this 27 day of December, 2012, I caused a true and correct copy of ANSWER TO PLAINTIFF'S COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT to be mailed via U.S. Mail, first class, postage pre-paid, and facsimile to the following:

Tracy R. Terhune
11230 Peachgrove Street #209
North Hollywood, CA 91601

/s/ Rachel Campbell
Secretary

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1 CASE NUMBER: ES013781
2 CASE NAME: BIRCHARD V. TERHUNE
3 BURBANK, CALIFORNIA APRIL 12, 2010
4 DEPARTMENT 3 HON. MARY DEDERICK,
5 JUDGE PRO TEM
6 REPORTER: GAIL PEEPLES, CSR NO. 11458
7 TIME: 10:53 A.M.
8 APPEARANCES: (AS PREVIOUSLY NOTED.)
9

10 THE COURT: BIRCHARD AND TERHUNE.

11 GOOD MORNING, MA'AM. WHAT IS YOUR NAME?

12 MS. BIRCHARD: KATIE BIRCHARD.

13 THE COURT: COUNSEL, STATE YOUR APPEARANCE.

14 MR. AMER: GOOD MORNING, YOUR HONOR. FADI AMER
15 HERE ON BEHALF OF DEFENDANT, TRACY TERHUNE.

16 MS. BIRCHARD: YOUR HONOR, I SUBMITTED SOME
17 EXHIBITS THAT THEY LAST HAD. I'M NOT SURE WHERE THOSE
18 ARE RIGHT NOW, BUT I WANTED FOR YOU TO SEE IT.

19 THE COURT: IF IT'S SOMETHING THAT'S GOING TO BE
20 USED, YOU NEED TO LOOK AT THEM.

21 THE BAILIFF: THAT'S WHY WE GAVE THEM TO YOU --

22 MR. AMER: I DID. BUT, YOUR HONOR, IT'S ABOUT --
23 I DON'T KNOW -- 30, 40 PAGES AT LEAST --

24 MS. BIRCHARD: AND YOUR HONOR, I ALSO HAVE SCREEN
25 SHOTS ON A DISK. I DIDN'T -- I COULDN'T PRINT IT OFF.
26 SO OBVIOUSLY THEY CAN'T SEE THAT. BUT THE TEXT IS IN
27 THAT.

28 THE COURT: LET ME INQUIRE ARE THERE WITNESSES IN

1 THIS CASE?

2 MS. BIRCHARD: YES.

3 MR. AMER: YES, YOUR HONOR.

4 THE COURT: YOU HAVE WITNESSES AND THEY'RE PRESENT
5 IN THE COURTROOM?

6 MR. AMER: YES, YOUR HONOR.

7 THE COURT: I'M GOING TO ASK THE WITNESSES TO STEP
8 OUTSIDE.

9 MR. AMER: THEY DID.

10 THE COURT: OH. OKAY.

11 THEY ALL DID?

12 THANK YOU, MADAM CLERK.

13 SO NO ONE IN HERE IS TESTIFYING?

14 MR. AMER: NO, YOUR HONOR.

15 THE COURT: OKAY.

16 THE BAILIFF: YOUR HONOR, THIS IS EXHIBITS FOR THE
17 PLAINTIFF, AND THIS IS EXHIBITS FOR THE DEFENDANT.

18 THE COURT: WE HAVE A REQUEST FOR CIVIL HARASSMENT
19 ORDERS FILED ON FEBRUARY 11, 2010, AND PLAINTIFF KATIE
20 BIRCHARD.

21 NOW -- ALL RIGHT. YOU MAY PROCEED TO TELL
22 ME ABOUT THE ALLEGATIONS CONTAINED IN YOUR REQUEST OF
23 YOURS.

24 MS. BIRCHARD: OKAY. YOUR HONOR, I'VE NEVER MET
25 MR. TERHUNE. WE'VE BEEN IN THE SAME ROOM BEFORE, BUT
26 WE'VE NEVER MET.

27 I STARTED A SILENT FILM WEB SITE IN MARCH,
28 2008. AND ONE OF MY MAIN SUBJECTS WAS THE SILENT FILM

1 STAR RUDOLPH VALENTINO. MR. TERHUNE HAS WRITTEN A BOOK
2 ABOUT THE RUDOLPH VALENTINO MEMORIAL SERVICE, AND HE IS
3 ALSO CURRENTLY THE HEAD PERSON OF IT. I'M NOT SURE WHAT
4 THE TITLE IS. I WAS CRITICAL OF THE MEMORIAL SERVICE BUT
5 UNAWARE OF MR. TERHUNE OR WHO HE HAS WAS IN AUGUST, 2008.

6 MR. TERHUNE DECIDED AT THAT TIME -- THERE
7 IS AN EMAIL IN EXHIBIT D TO MISS EVELYN ZEMAYA STATING
8 THAT HE'D BEEN WATCHING ME FOR TWO YEARS, KEEPING TABS ON
9 ME. AND ABOUT A YEAR LATER -- HE DIDN'T DO ANYTHING.
10 YOU KNOW, I HAD NO CLUE HE EXISTED.

11 A YEAR LATER, ABOUT JUNE, 2009, OR JULY
12 2009, SOMEONE REQUESTED THAT I POST SOME SILENT BOOK
13 REVIEWS ON MY WEB SITE. YOU KNOW, AS HELPFUL THING.
14 THAT'S WHAT I DID. SO I DID. AND I GAVE MR. TERHUNE'S
15 BOOK A ONE NINE REVIEW. I HAD SKIMMED THE BOOK, AND IT
16 JUST WASN'T IMPRESSIVE TO ME. AND I SAID AS MUCH. I
17 SAID IT'S NOT A BAD BOOK, IT'S JUST UNNECESSARY.

18 WELL, MR. TERHUNE DECIDED HE HAD TO
19 SABOTAGE ME, DO AWAY WITH ME, SLANDER MY BUSINESS,
20 SLANDER ME AND SO FORTH.

21 I NOTICED A TURN IN THE COMMUNITY IN PEOPLE
22 I'VE KNOWN IN AUGUST AND SEPTEMBER, 2009, WHICH IS WHAT
23 TIME A SILENT FILM EVENT CALLED CINECOM TOOK PLACE. AND
24 MANY OF MR. TERHUNE'S CHARACTER WITNESSES TODAY ARE
25 INVOLVED IN CINECOM. I COULDN'T UNDERSTAND WHAT THE
26 NEGATIVE -- YOU KNOW, WHAT THIS HARSH NEGATIVE REACTION
27 CAME FROM. YOU CAN SEE THAT IN THE EMAILS IN EXHIBIT E.
28 I WAS CONFOUNDED.

1 I FINALLY SPOKE WITH SOMEONE, HUGH NEALY,
2 OF MARY PICKFORD INSTITUTE. HE WAS THE ONE WHO INVITED
3 ME. AND HE SAID -- HE KIND OF FILLED ME IN THAT TRACY
4 WAS THE ONE WHO'S BEEN SAYING "WHAT'S WITH THIS GIRL?"
5 HUGH WAS VERY PEACEFUL PERSON. HE SAID JUST LET IT GO.

6 SO I WAS GOING TO. AND MR. TERHUNE,
7 LITERALLY ALMOST THE NEXT DAY -- AND I BELIEVE WAS
8 OCTOBER, 2009 -- POSTED ON NIGHTSHADE.COM, IT'S IN
9 EXHIBIT D, A POST RAILING ME SAYING I -- I GO BY THE PEN
10 NAME HALA PICKFORD. THAT'S WHAT EVEN MY FAMILY CALLS ME
11 EVEN THOUGH MY LEGAL NAME IS KATIE BIRCHARD.

12 MR. TERHUNE ALLEGED MANY FALSE THINGS,
13 INCLUDING THAT I MADE A SLANDEROUS COMMENT AGAINST MISS
14 DONNA LITTLE, AND HE ALLEGED MY NAME WAS LISA BASED OFF
15 AN AMAZON REVIEWER NAMED LISA BURT. BUT THAT IS NOT MY
16 NAME.

17 I'M SORRY. IT'S A LONG STORY.

18 BUT TO GET TO ANOTHER POINT --

19 THE COURT: JUST SLOW DOWN FOR THE REPORTER --

20 MS. BIRCHARD: OH. I'M SORRY.

21 SO IN DECEMBER -- I WROTE AN ARTICLE ABOUT
22 CINECOM REVIEWING IT. AND IT WAS A NEGATIVE REVIEW. I
23 DID NOT LIKE CINECOM. THAT'S WHY MANY OF HIS CHARACTER
24 WITNESSES TODAY ARE HERE TODAY. I EITHER MET THEM ONCE
25 OR I NEVER MET THEM AT ALL.

26 HE'S LIKE, "GOT TO GET THAT GIRL."

27 THEN I POSTED A POST ABOUT THE HARASSMENT
28 I'VE BEEN DEALING WITH, BUT I DID NOT NAME ANYONE BECAUSE

1 I DID NOT KNOW HE WAS DOING IT AT THE TIME. AND THEN I
2 POSTED AN ARTICLE CALLED "DEATH TO THE KOOKIES' LIES."
3 AND THAT WAS -- I THINK THAT WAS THE FIRST PLACE THAT I
4 USED MR. TERHUNE'S NAME AND JUST -- YOU KNOW, JUST
5 DEFENDING MYSELF AGAINST WHAT HE'S PUTTING OUT THERE.
6 THIS HAD TO BE NOVEMBER, 2009, OR OCTOBER, 2009.

7 IN DECEMBER, 2009 -- AND THIS IS WHY WE'RE
8 HERE TODAY -- I HAD TAKEN TIME OFF TO WRITE TWO BOOKS.
9 AND ON CHRISTMAS DAY, CHRISTMAS DAY, I WAKE UP TO A EMAIL
10 FROM MR. TERHUNE, WHICH IS IN EXHIBIT D, BASICALLY SAYING
11 "OH, WELL, DO YOU KNOW WHAT? SINCE YOU SLANDER EVERYONE,
12 I'M GOING TO SHOW YOU --" LET'S SEE. "SINCE THIS IS MY
13 FIRST EMAIL TO YOU AND YOU'RE SLANDEROUS, PLEASE VISIT
14 THIS LINK BELOW. AND I'M GOING TO SEND IT OUT TO MY NEWS
15 GROUP OF 500 PEOPLE. OH, BY THE WAY, DID YOU WANT ME TO
16 MAIL YOU A COPY OF IT? I CAN EASILY SEND IT TO MY HOME
17 ADDRESS WHICH IS LISTED HERE IF YOU WOULD LIKE."

18 MY LEGAL NAME, MY HOME ADDRESS IS NOT
19 PUBLIC INFORMATION.

20 MR. TERHUNE HAS SUBMITTED A 411.COM
21 PRINTOFF THAT SAYS "KATIE BIRCHARD" AND MY HOME ADDRESS.
22 THERE'S NO DATE ON THAT. I SUSPECT HE SUBMITTED IT. BUT
23 TO BOOT, HOW DID HE GET MY REAL NAME? HE HAD TO HAVE
24 DONE SOME SLEUTHING.

25 THIS IS CHRISTMAS DAY. I MEAN, THIS -- I
26 PRINTED OFF IN EXHIBIT D HIS -- NOT ONLY HIS EMAILS BUT
27 ALSO HIS POST, YOU KNOW, JUST -- IT'S, LIKE, ALMOST 3
28 PAGE TIRADE AGAINST ME AND REPEATED -- REPEATEDLY SAYING

1 "KATIE LYNN BIRCHARD, FICTITIOUSLY KNOWN AS HALA
2 PICKFORD." AND HE MAKES ALL THESE FALSE ACCUSATIONS,
3 WHICH ARE NOT FOR THIS COURT TODAY.

4 I MEAN, NOT ONLY DID HE PUT OUT MY PERSONAL
5 INFORMATION, HE PUT OUT --

6
7 (PETITIONER ADMONISHED TO SLOW DOWN BY THE
8 COURT REPORTER.)

9
10 MS. BIRCHARD: HE PUT OUT MY ONLINE USER NAMES,
11 WHICH HAD NOTHING TO DO WITH HIM AND HAD NOTHING DO WITH
12 ANYONE, NO SLANDER OR ANYTHING. JUST NOTHING. AND HE
13 ALSO, YOU KNOW -- YOU HAVE TO FORGIVE ME. I'M GOING TO
14 HAVE TO FIND IT HERE.

15 BUT HE -- HE ALSO HE PUT MY -- MY
16 14-YEAR-OLD SISTER'S NAME, ABBEY BIRCHARD. ABBEY NICOLE
17 BIRCHARD. AND HE PUT IN BIG BOLD LETTERS.

18
19 (REPORTER REQUESTED MS. BIRCHARD SLOW DOWN
20 AND/OR REPEAT.)

21
22 MS. BIRCHARD: IT'S A LOT OF POSTS. OH. HERE IT
23 IS ON THE BOTTOM OF THE PAGE AFTER THE START OF THIS --
24 THE PAGE AFTER HIS EMAIL. AT THE BOTTOM IT SAYS -- THIS
25 IS A QUOTE -- WAIT. SORRY.

26 "WHY NOT. WITH A FEW STRIKES OF THE
27 KEYBOARD, KATIE LYNN BIRCHARD BECAME THE FICTIONAL HALA
28 PICKFORD. EVEN HER OWN SISTER, ABBEY NICOLE BIRCHARD,

1 WROTE ABOUT THE IDENTITY CHANGE. ANYWAY, "OH MY GOD,
2 HALA KITTY IS MY SISTER BUT SHE JUST GOES BY HALA NOW.'"

3 AND I HAVE THE SCREEN SHOTS OF SOME OF
4 THIS. I KNOW IT'S HARD TO SEE. BUT HE PUT THESE IN BIG,
5 BOLD LETTERS. HE WENT OUT OF HIS WAY. AND YOU COULD
6 NOT -- HE CLAIMED THAT HE GOT MY SISTER'S NAME FROM A
7 BOOK. BUT YOU WOULD HAVE TO GET MY FULL LEGAL NAME TO
8 BEGIN WITH TO GET THE REST OF THAT. AND, ALSO, THAT DOES
9 NOT GEL WITH WHAT -- THE EXHIBITS D AND E BECAUSE HE
10 MAKES CLAIMS TO SOME GIRL GIVING HIM THE INFORMATION.

11 AND THAT GOES BACK TO HOW DID YOU GET MY
12 LEGAL NAME AND THEN ARE YOU SURE THAT'S HOW YOU GOT MY
13 ADDRESS.

14 BECAUSE I THINK HE GOT -- WHAT HE DID WAS
15 IN EARLY DECEMBER -- THIS IS WHAT I SUSPECT. HE -- IN MY
16 PAY PAL ACCOUNT I HAD TO USE MY LEGAL LAST NAME. HALA
17 BIRCHARD IS WHAT IT SAID. BUT HE TOOK THAT, GOOGLED
18 THAT, OBTAINED MY ASCAP, WHICH YOU'RE NOT SUPPOSED TO
19 SEARCH UNLESS YOU'RE A SONGWRITER, MUSIC FOR COPYRIGHT
20 PURPOSES, CAME UP AS HALA KITTIE KATIE BIRCHARD. THAT
21 WAS MY NAME AS SONGWRITER. AND THEN FROM THERE HE HAD
22 KATIE BIRCHARD.

23 WELL, THEN HE HAD MICHAEL YAKENTOSS, AS A
24 TEST IN EXHIBIT F A STATEMENT BY ELENA ARCHER, WHO COULD
25 NOT BE HERE TODAY BUT SHE WANTED TO WRITE A WITNESS
26 STATEMENT. HE -- MICHAEL YAKENTOFF WAS A FRIEND OF HERS.
27 AND HE ASKED FOR MY ADDRESS, WHICH ELENA HAD BECAUSE WE
28 WERE WORKING ON A PROMOTION TOGETHER. AND THEN ALL OF A

1 SUDDEN SHORTLY AFTER THAT TRACY HAS MY ADDRESS. I'M
2 PRETTY SURE THAT'S HOW HE GOT IT. I CAN'T PROVE IT; BUT
3 I'M PRETTY SURE.

4 ANYWAYS, THE REASON I'M HERE TODAY FOR A
5 RESTRAINING ORDER IS BECAUSE MR. TERHUNE DID NOT STOP
6 WITH THE CHRISTMAS DAY TIRADE. I MEAN, I WAKE ON
7 CHRISTMAS DAY, HERE'S ALL MY PERSONAL INFORMATION, HERE'S
8 MY LITTLE SISTER'S PERSONAL INFORMATION. AND FOR WHAT?
9 BECAUSE YOU DIDN'T LIKE THE REVIEW OF MY BOOK? BECAUSE
10 YOU DIDN'T LIKE THAT I SAID YOU -- I DON'T LIKE THE
11 VALENTINO MEMORIAL SERVICE, WHICH I CALLED THE DEATH
12 FEST. I DON'T LIKE IT; I THINK IT'S STUPID.

13 BUT THAT'S -- MR. TERHUNE HAS EVERY RIGHT
14 TO GIVE ME A BAD REVIEW OR SAY "OH, I DON'T LIKE THAT" OR
15 "I DON'T LIKE HER." BUT TO SAY I'M A FRAUD AND A
16 CRACKPOT AND ALL THIS TERRIBLE STUFF AND INVADE MY
17 PRIVACY AND MY FAMILY'S PRIVACY -- HE TOLD -- MY
18 FRIEND -- ON CHRISTMAS DAY WHEN THIS TIRADE WENT OUT, I
19 MADE A QUICK EMAIL BLAST TO EVERY FRIEND I COULD THINK
20 OF. AND A DAVID GASTON, WHOSE REAL NAME IS BRIAN GASTER,
21 I BELIEVE -- HE LIVES IN COLORADO. AND UNFORTUNATELY I
22 DID NOT GET A STATEMENT FROM HIM FOR THIS. I WAS NOT
23 ABLE TO CONTACT HIM AS WE ARE NO LONGER IN CONTACT. BUT
24 HE CALLED TRACY ON TRACY'S LISTED PHONE NUMBER. AND THIS
25 IS CHRISTMAS DAY ABOUT 2:00 PM. HE SAID TRACY WAS
26 EXTREMELY ANGRY, JUST RANTING AND RAVING, JUST OUT OF
27 NOWHERE.

28 AND HE MENTIONS "OH, WELL, I WANT TO MEET

1 WITH HER. ISN'T THERE A SIZZLER BY HER HOUSE?"

2 AND THERE IS INDEED A SIZZLER ABOUT TWO
3 BLOCKS FROM MY HOUSE. AND, I MEAN, EVEN IF YOU GET MY
4 ADDRESS AND YOU -- I MEAN, THAT'S PRETTY HARSH TO BE ABLE
5 TO GET MY ADDRESS AND SEND IT TO ME AND BE LIKE, OH, YOU
6 KNOW -- THAT'S QUITE THREATENING RIGHT THERE.

7 YES, YOU COULD LOOK THAT UP ONLINE. BUT HE
8 DID HIS HOMEWORK. YOU KNOW. HE KNEW WHERE I WAS. HE
9 KNEW WHAT WAS AROUND ME. HE COULD COME AND HARM ME IF HE
10 WANTED.

11 SO HE TRIED TO BLACKMAIL ME BASICALLY INTO
12 TAKING DOWN ANY CRITICAL REVIEWS OF HIM. AND YOU CAN SEE
13 IN EXHIBIT D THERE'S AN EMAIL FROM DAVID AND HIM SAYING
14 ALL THE STUFF HE WANTS REMOVED, CALLED "NON-COMPLIANCE
15 FROM TRACY."

16 AND YOU CAN SAY THE QUOTES FROM DAVID DON'T
17 HAVE ANYTHING TO DO WITH MR. TERHUNE, THEY'RE JUST A
18 MEMORIAL SERVICE OR KOOKIE OR SOMETHING. BUT IT'S NOT
19 ABOUT MR. TERHUNE.

20 THAT'S THE MOMENT I DECIDED I'M NOT GOING
21 TO DEAL WITH THIS BULLY. WHEN -- YOU KNOW -- I'M NOT IN
22 GOOD HEALTH. I HAVE RHEUMATOID ARTHRITIS. I'M
23 UNEMPLOYED. I'M PRETTY CLOSE TO BEING DISABLED LEGALLY.
24 I HAVEN'T APPLIED FOR IT; I DON'T WANT TO. I MEAN, TO
25 DEAL -- I WAS ON NO MEDICATION EXCEPT IBUPROFEN DURING
26 THIS TIME.

27 AND I SAID REPEATEDLY IN MY EMAILS IN
28 EXHIBIT E TO ELENA ARCHER AND A FEW OTHERS THAT "I'M

1 GOING TO FILE FOR THIS, I'M GOING TO FILE FOR THIS AS
2 SOON AS I GET A CHANCE."

3 THIS WAS LONG BEFORE MR. TERHUNE HAD
4 LAWYERED UP.

5 HE'S ALLEGING THIS IS JUST -- THIS IS JUST
6 A -- YOU KNOW, JUST A FRIVOLOUS THING AND I SHOULD HAVE
7 TO PAY HIS EXPENSIVE LAWYER FEES.

8 BUT IT'S NOT FRIVOLOUS. YOU DON'T PUT
9 SOMEONE'S 14-YEAR-OLD SISTER'S NAME ONLINE AND DIG UP
10 THEIR -- THEIR REAL LEGAL NAME AND HOME ADDRESS AND KNOW
11 WHERE THEIR HOME IS AND THREATEN THEM LIKE THAT.

12 I WANT HIM TO LEAVE ME ALONE. I WANT
13 HIM TO QUIT -- I MEAN, HE DIDN'T EVEN LEARN HIS LESSON
14 WITH PUTTING THINGS ONLINE. HE PUT UP TWO MORE ARTICLES,
15 WHICH ARE BOTH IN EXHIBIT D, AFTER -- BECAUSE WE BOTH
16 AGREED TO TAKE SOME DOWN. BECAUSE I WAS WILLING TO
17 COMPLY JUST TO MAKE THIS GO AWAY.

18 AND WHEN HE STARTED MAKING MORE AND MORE
19 DEMANDS IS WHEN I SAID, "FORGET IT, I'M NOT DOING IT."

20 THAT'S WHEN HE STARTED PUTTING UP MORE AND
21 MORE. AND I STARTED HITTING IT WITH DCMA, DIGITAL
22 MILLENNIUM COPYRIGHT ACT, CLAIMS BECAUSE HE KEPT PUTTING
23 UP PHOTOS OF ME TO BOOT, JUST FOR GOOD MEASURE, ALONG
24 WITH MY NAME SO THAT ANYONE WHO WANTS TO HARM ME CAN FIND
25 IT.

26 FINALLY, HE MUST HAVE GOT HIS LAWYER IN,
27 LIKE, JANUARY, AND HE WAS ADVISED TO TAKE DOWN THOSE
28 POSTINGS. AND THEN HE STARTED THREATENING ME WITH A

1 LEGAL LETTER.

2 AND I SAID, "WELL, GEE, I BETTER PROTECT
3 MYSELF."

4 ABOUT THE SAME TIME -- YOU CAN ALMOST SEE
5 THE TIME LINE BECAUSE MY FIRST APPOINTMENT WHERE I GOT
6 MEDICATED WAS, I THINK, FEBRUARY 3. FEBRUARY 1 OR 3. SO
7 IT WAS -- RIGHT AFTER THAT IS WHEN I APPLIED FOR THAT --
8 I MEAN, HE'S A RAT AND HE'S VERY -- HE CAN JUST BLEND
9 INTO A CROWD. YOU CAN'T EVEN FIND HIM. HE'S VERY
10 AVERAGE LOOKING.

11 BUT HE'S ALWAYS SEEING ME. HE ALWAYS GOES
12 OUT OF HIS WAY TO SAY HE'S SEEN ME AND DID THIS. HE WENT
13 TO A SCREENING OF THE FLAPPER AT THE SILENT FILM THEATRE,
14 WHICH I HEAVILY PROMOTED. THIS WAS, I THINK, FEBRUARY 3.
15 AND IT WAS THE DAY BEFORE HIS BIRTHDAY. HE SEEN ME
16 BECAUSE I WON A CONTEST. BUT I DID NOT SEE HIM BECAUSE
17 IT WAS A SOLD-OUT EVENT. 200-SOME PEOPLE. AND ALSO I
18 JUST HAVE TROUBLE PICKING HIM OUT OF A CROWD.

19 WHEN I WENT HOME ON NIGHTSHADEVILLE.COM,
20 THE SAME PLACE HE PUT HIS OTHER TIRADE -- AND HE BARELY
21 POSTS THERE, MAYBE 20 TIMES A YEAR OR SOMETHING -- HE'S
22 LIKE -- HIS WHOLE POST WAS ABOUT SEEING ME AND HOW FAT I
23 WAS.

24 AND HE WENT OUT OF HIS WAY TO DO THIS ON
25 HIS BIRTHDAY. IT'S LIKE HOW ON OBSESSED ARE YOU? HE'S
26 OBSESSIVE, HATEFUL, AND MALICIOUS. AND HE'S DONE THIS TO
27 OTHER PEOPLE BEFORE. HE'S NOT GOING TO STOP. I WANT HIM
28 TO LEAVE ME ALONE. BUT INSTEAD, I JUST KEEP GETTING

1 SERVED WITH NEW LAWSUITS THAT HE CAN MAKE OUT OF HIS
2 FANTASIES.

3 I'M SORRY. I'M DONE NOW.

4 THE COURT: MR. AMER.

5 MR. AMER: MISS BIRCHARD, HOW LONG HAVE YOU --

6 THE COURT: I'M SORRY. YOU NEED TO SPEAK UP,
7 SIR.

8 MR. AMER: MISS BIRCHARD --

9 MS. BIRCHARD: DO I ANSWER?

10 THE COURT: ARE YOU CALLING MISS BIRCHARD?

11 MR. AMER: YES.

12 THE COURT: PARDON ME?

13 MR. AMER: I'D LIKE TO CALL MISS BIRCHARD FOR
14 CROSS-EXAMINATION, YOUR HONOR.

15 MS. BIRCHARD: DO I STAY HERE OR NOT?

17 CROSS-EXAMINATION

18 BY MR. AMER:

19 Q. GOOD MORNING.

20 A. GOOD MORNING.

21 Q. MISS BIRCHARD, HOW LONG HAVE YOU KNOWN
22 MR. TERHUNE?

23 A. I DON'T KNOW MR. TERHUNE. THIS IS THE
24 FIRST TIME I'VE SEEN HIM IN A CROWD. TODAY.

25 Q. HOW LONG HAVE YOU KNOWN OF HIM?

26 A. I WOULD SAY IT WAS THE SUMMER OF 2009. AND
27 I'VE TRIED TO PICK CERTAIN DATES, BUT I REALLY DON'T KNOW
28 THE MONTH. IT WAS BEFORE AUGUST, BUT IT WAS AFTER MAY.

1 Q. SO, IS TODAY THE FIRST TIME YOU'RE ACTUALLY
2 SEEING HIM IN PERSON?

3 A. YES. TO MY KNOWLEDGE. I MEAN, WE'VE BEEN
4 IN THE ROOM, YOU KNOW, TOGETHER BEFORE AT EVENTS. BUT
5 I'VE NEVER SEEN HIM BEFORE.

6 Q. SO YOU GUYS NEVER HAD ANY RELATIONSHIP
7 TOGETHER?

8 A. I'M SORRY?

9 Q. ANY PERSONAL RELATIONSHIP OR ANYTHING LIKE
10 THAT TOGETHER?

11 A. LIKE WHAT DO YOU MEAN?

12 Q. DID YOU GUYS EVER -- NEVER MIND. I'LL TAKE
13 THAT.

14 HOW LONG HAVE YOU BEEN UNEMPLOYED?

15 A. I'VE BEEN UNEMPLOYED FOR -- OH, WHEN WAS
16 THAT?

17 PROBABLY 2 TO 3 YEARS. YOU KNOW, I GET
18 LITTLE ODDS AND ENDS. BUT I DON'T -- I DON'T REALLY HAVE
19 STEADY EMPLOYMENT BECAUSE IT'S VERY HARD FOR ME TO HOLD
20 IT DOWN WITH MY ARTHRITIS.

21 Q. DO YOU OWN OR BLOG ON CERTAIN WEB SITES?

22 A. I'M SORRY?

23 Q. DO YOU OWN ANY WEB SITES?

24 A. WHAT DO YOU MEAN BY "OWN"? I DON'T
25 UNDERSTAND.

26 Q. DO YOU YOU HAVE CERTAIN BLOGS THAT YOU GO
27 AND POST COMMENTS ON?

28 A. DO YOU MEAN DO I WRITE ON CERTAIN SITES --

1 Q. YES.

2 A. YES.

3 Q. CAN YOU TELL ME SOME OF THE NAMES OF WEB
4 SITES THAT YOU --

5 A. FORGETTHETALKIES.COM.
6 RUDOLPHVALENTINO.ORG. THE
7 RUDOLPHVALENTINOFILMFESTIVAL.COM. THEN THERE'S THE
8 VALENTINO OF FORMS, BUT IT'S A REALLY LONG ADDRESS THAT I
9 CAN'T QUITE REMEMBER. DWGRIFFITHFOREVER.COM, WHICH I'M
10 CURRENTLY CREATING. IT'S NOT REALLY DONE.
11 HALAPICKFORD.COM. PERPETUAL.FLAPPER.BLOGSPOT.COM.
12 1921PVG.COM.

13 I WANT TO SAY THAT'S IT. I THINK I MIGHT
14 HAVE FORGOTTEN SOMETHING. I -- I THINK THAT'S MOSTLY
15 IT.

16 Q. PRIOR TO THIS LAWSUIT HAVE YOU EVER ACCUSED
17 ANYBODY ELSE OF HARASSING YOU?

18 A. NOT SERIOUSLY, NO.

19 I KNOW YOU GUYS WANT TO PLAY UP THAT VLAD
20 KOSLOV THING. BUT THAT'S SILLY OBVIOUSLY. I HAVE
21 NEVER -- THERE IS A VLAD KOSLOV WHO HAS MADE THESE LITTLE
22 SILLY MOVIES ABOUT RUDY. AND HE WAS HARASSING ME FOR A
23 WHILE BUT NOT IN THE STALKING, COURTROOM SENSE, YOU KNOW.
24 I NEVER TOOK HIM TO COURT. I NEVER THREATENED TO TAKE
25 HIM TO COURT. I NEVER SAID, "OH, MR. KOSLOV IS OUTSIDE
26 MY HOUSE" OR HAS MY ADDRESS OR ANYTHING.

27 I MEAN, MR. TERHUNE DOES NOT SEEM TO GET
28 THE DIFFERENCE BETWEEN WHAT IS WRITTEN AND SOMETIMES IN

1 JEST AND WHAT IS WRITTEN IN DEAD SERIOUSNESS.

2 SERIOUSNESS IS WHEN YOU'RE INTO COURT.

3 Q. BUT YOU DID WRITE BEFORE, DID YOU NOT,
4 ABOUT PEOPLE HARASSING YOU?

5 A. I SAID THAT DONNA HILL AND VLAD KOSLOV ARE
6 HARASSING ME, YES, AND I STAND BY THAT. BUT I HAVE NO
7 PLANS TO TAKE EITHER OF THEM TO COURT OVER IT BECAUSE
8 THEY'RE NOT HARASSING ME IN THE LEGAL SENSE. THEY'RE A
9 PAIN IN MY SIDE AND SPREADING GOSSIP AND DISINFORMATION;
10 BUT THEY'RE NOT THREATENING ME WITH MY HOME ADDRESS AND
11 MY SISTER'S NAME.

12 THE COURT: MISS BIRCHARD, I'M GOING TO CAUTION
13 YOU ABOUT ANSWERING THE QUESTIONS DIRECTLY. AND IF THE
14 ANSWER IS A YES OR NO --

15 MR. AMER: JUST --

16 MS. BIRCHARD: -- JUST SO A YES OR NO.

17 OKAY.

18 Q. BY MR. AMER: HAVE YOU EVER BEEN THREATENED
19 WITH ANY LAWSUITS?

20 A. NO.

21 Q. NOBODY'S EVER THREATENED TO SUE YOU?

22 THE COURT: WHAT'S THE RELEVANCE OF THAT QUESTION,
23 COUNSEL?

24 MR. AMER: YOUR HONOR, MISS BIRCHARD HAS A PATTERN
25 OF GOING ONLINE AND POSTING EXTREMELY DEFAMATORY
26 STATEMENTS. AND --

27 THE COURT: THAT'S A DIFFERENT ISSUE THAN THE ONE
28 THAT'S PRESENTLY BEFORE THE COURT. WE HAVE HERE THE

1 REQUEST FOR A RESTRAINING ORDER RE CIVIL HARASSMENT --

2 MS. BIRCHARD: I SHOULD ADD --

3 THE COURT: EXCUSE ME, MA'AM. EXCUSE ME, MA'AM.

4 IF YOU HAVE A SEPARATE OR INDEPENDENT
5 ACTION, CIVIL ACTION, YOU NEED TO TAKE THAT UP IN THE
6 APPROPRIATE FORUM.

7 MR. AMER: I UNDERSTAND.

8 THE COURT: BEFORE WE GO BACK ON THE RECORD, I
9 WANT TO CAUTION BOTH PARTIES -- AND PARTICULARLY YOU,
10 MA'AM, SINCE YOU'RE TESTIFYING -- YOU NEED TO WAIT, YOU
11 NEED TO HEAR THE WHOLE QUESTION, THEN YOU NEED TO RESPOND
12 TO IT. AND YOU NEED TO NOT INTERRUPT OR SPEAK OVER
13 SOMEONE'S VOICE BECAUSE WE HAVE RECORDINGS GOING ON IN
14 HERE AND OUR COURT REPORTER NEEDS TO TAKE DOWN EVERYTHING
15 THAT'S BEING SAID BY EACH PARTY.

16 MS. BIRCHARD: OKAY. MY APOLOGIES. I'M SORRY.
17 I'M NOT USED TO IT.

18 GO AHEAD.

19 THE COURT: GO AHEAD.

20 Q. BY MR. AMER: MISS BIRCHARD, YOU CLAIM THAT
21 MR. TERHUNE IS HARASSING YOU?

22 A. YES.

23 Q. OR HAS HARASSED YOU FOR THE PAST 3 YEARS.
24 IS THAT CORRECT?

25 A. NO.

26 Q. HOW LONG DO YOU THINK HE'S BEEN HARASSING
27 YOU FOR?

28 A. TO MY KNOWLEDGE --

1 WELL, AM I ALLOWED TO ANSWER THIS ONE YES
2 OR NO?

3 TO MY KNOWLEDGE, I'D SAY SINCE -- HE'S BEEN
4 HARASSING ME SINCE THE SUMMER OF 2009. BUT IT'S
5 REALLY -- YOU KNOW, I DON'T KNOW FOR SURE BECAUSE I
6 WAS -- I WAS NOT AWARE THAT MR. TERHUNE WAS THE ONE DOING
7 IT UNTIL LATE SEPTEMBER OR OCTOBER OF 2009 BECAUSE BEFORE
8 THAT I THOUGHT IT WAS JUST DONNA HILL.

9 Q. WHEN YOU SAY HARASS, CAN YOU PLEASE TELL US
10 WHAT YOU MEAN BY THAT.

11 A. WHAT DO YOU MEAN?

12 Q. HOW HAS HE HARASSED YOU?

13 A. I DON'T -- I DON'T KNOW HOW TO EXPLAIN.
14 LIKE, WHAT DO I --

15 Q. LIKE, WHAT HAS HE DONE FOR YOU TO FEEL LIKE
16 HE WAS HARASSING YOU?

17 A. HE HAS HARASSED ME VERBALLY TO PEOPLE BY
18 SAYING "OH, THIS GIRL'S TERRIBLE AND SHE'S A FRAUD AND
19 SHE'S DERANGED."

20 I MEAN, YOU CAN SEE IT IN -- I BELIEVE IT'S
21 EXHIBIT 8 TO -- IT'S EMAIL TO EVELYN ZEMAYA. MISS ZEMAYA
22 JUST SENT A QUERY LETTER A FEW PAGES -- NOT EVEN A FEW
23 PAGES, A FEW PARAGRAPHS WHICH ARE INCLUDED, AND
24 MR. TERHUNE REPLIED WITH A TWO-PAGE JUST TIRADE AGAINST
25 ME. THAT -- I MEAN, THAT, TO ME, IS KIND OF THE
26 DEFINITION OF THIS HARASSMENT AND THIS -- THIS JUST
27 ONGOING HATRED AND OBSESSIVE, YOU KNOW, OBSESSION TO GET
28 RID OF ME.

1 I MEAN, HE LITERALLY TOLD DAVID GASTON THAT
2 THERE WAS AN ANTI-HALA COALITION AND THEY WERE ALL SET TO
3 TAKE ME AWAY AND MAKE ME NEVER WRITE ANYTHING AGAIN. I
4 MEAN, THAT'S HARASSMENT. THAT'S HARASSMENT, YOU KNOW.

5 Q. IS THAT IT?

6 A. YES.

7 Q. ON YOUR COMPLAINT YOU STATED THAT HE
8 HARASSED YOU ON THE EVENING OF WEDNESDAY, FEBRUARY 3?

9 A. FEBRUARY 3.

10 NO. I DID NOT SAY THAT. I SAID HE WAS
11 THERE, THAT I WAS NOT AWARE OF HIM. THE HARASSMENT CAME
12 THE NEXT DAY ON HIS BIRTHDAY WHEN HE DECIDED THAT HE HAD
13 TO SAY HOW FAT I WAS. I SAID HE WAS PRESENT ON FEBRUARY
14 3, I JUST WAS NOT AWARE OF IT.

15 Q. SO WHY WAS HIS PRESENCE RELEVANT?

16 A. HIS PRESENCE IS RELEVANT FOR TWO REASONS.
17 IN THE CASE THAT SOMEONE IS SITTING HERE THREATENING YOU
18 WITH "I HAVE YOUR HOME ADDRESS AND I HAVE ALL YOUR
19 PERSONAL INFORMATION AND I'M GOING TO DO AWAY WITH YOU,
20 I'M GOING TO MAKE YOU GO AWAY AND I'M GOING TO SUE YOU
21 INTO OBLIVION" THEN -- I MEAN, MR. TERHUNE'S TIRADES,
22 WHICH YOU CAN SEE IN EXHIBIT D ESPECIALLY -- I MEAN, WHEN
23 YOU READ THAT, THAT'S JUST FULL OF HATEFUL AND MALICIOUS
24 CONTENT.

25 I MEAN, I MAKE LITTLE CHILDISH NAMES LIKE
26 "KOOKIE," BUT I'M NOT "OH, MR. TERHUNE, I KNOW WHERE YOU
27 LIVE, I'M GOING TO GET YOU." I'M NOT, LIKE, "OH, I'M
28 GOING TO POST ABOUT YOUR FAMILY."

1 IT'S RELEVANT BECAUSE IF HE'S IN A CROWD
2 AND I CAN'T SEE HIM AND HE CAN JUST GO FREE WILLY-NILLY
3 AND SNEAK UP AND DO WHATEVER HE WANTS -- I MEAN, I WAS
4 TERRIFIED THAT NIGHT. I CALLED MY FRIEND SEVERAL
5 TIMES --

6
7 (REPORTER REQUESTED MS. BIRCHARD SLOW DOWN
8 AND/OR REPEAT.)
9

10 THE WITNESS: I'M SORRY.

11 I SAID I DON'T SEE HIM, I DON'T SEE HIM.
12 BECAUSE THAT WAS THE FIRST TIME I HAD GONE TO THAT
13 THEATRE SINCE THE INCIDENT. AND I HAD HEAVILY PROMOTED
14 THIS EVENT.

15 SO MR. TERHUNE, AS YOU CAN SEE -- I THINK
16 IT'S EXHIBIT -- OH, SHOOT. I THINK IT'S EXHIBIT F. IT'S
17 THE STACK COUNTERS I INCLUDED. IT MIGHT BE G. F OR G.
18 HE'S ALWAYS ON MY SITE. HE REPEATEDLY READS THE SAME
19 ARTICLES OVER AND OVER AGAIN. I MEAN, HE'S WATCHING FOR
20 SOMETHING TO SABOTAGE AND POSSIBLY TO HARM ME.

21 AND IT'S RELEVANT BECAUSE ON FEBRUARY 4,
22 HIS BIRTHDAY, HIS BIRTHDAY, HE GOES ONLINE, HE'S LIKE, "I
23 GOT TO TALK ABOUT HOW FAT THIS CHICK IS."

24 I MEAN, HOW MUCH HATRED DO YOU HAVE TO HAVE
25 FOR SOMEONE ON CHRISTMAS DAY AND ON YOUR BIRTHDAY, "OH, I
26 GOT TO GET THIS GIRL," YOU KNOW.

27 Q. BY MR. AMER: SO HE -- YOU'RE NOT ALLEGING
28 THAT HE EVER CAME UP TO YOU, THAT HE EVER SPOKE WITH YOU,

1 THAT HE HAD EVER DID ANYTHING ON THAT DAY?

2 A. NO. BUT ACCORDING TO HIS OWN WITNESS
3 STATEMENTS, HE WAS WELL AWARE I WAS THERE AND THOUGHT WAS
4 MADE TOWARDS DOING IT.

5 IT'S NICE TO SEE ONE OF MR. TERHUNE'S
6 WITNESSES IS IN THE AUDIENCE NOW.

7 THE COURT: NEXT QUESTION.

8 Q. BY MR. AMER: YOU WON A PRIZE THAT DAY,
9 DIDN'T YOU?

10 A. I'M SORRY?

11 Q. YOU WON A PRIZE THAT EVENING, FEBRUARY 3 --

12 A. YES.

13 Q. WAS YOUR NAME ANNOUNCED?

14 A. NO.

15 Q. SO HOW DID YOU KNOW TO COME UP TO THE
16 STAGE?

17 A. BECAUSE THERE WAS A WOMAN WHO HAD A DVD FOR
18 A PRIZE. AND SHE SAID, "CAN ANYONE TELL ME WHERE THE
19 SILENT FILM STAR OLIVE THOMAS DIED, WHERE DID SHE EXACTLY
20 DIE." AND PEOPLE STARTED SHOUTING OUT "PARIS."

21 AND I WASN'T GOING TO SAY ANYTHING BECAUSE
22 I KNEW IT WASN'T REALLY FAIR. BUT I WAS LIKE "THE
23 AMERICAN HOSPITAL IN PARIS." AND I WON.

24 AND SHE SAID, "OH, WELL, HERE. THANK YOU."

25 AND THEN THE EMCEE SAYS "OH, THIS GIRL'S
26 BEEN GOING TO THE FLAPPER SCREENING FOR A WHILE NOW."

27 I MEAN, IT WAS NEVER ANNOUNCED --

28 THE COURT: MISS --

1 THE WITNESS: I'M SORRY --

2 THE COURT: -- YOU NEED TO ANSWER ONLY THE
3 QUESTION AND NOT GO INTO THESE LONG NARRATIVES.

4 THE WITNESS: MY APOLOGIES.

5 THE COURT: YOU DON'T NEED TO APOLOGIZE.

6 YOU NEED TO FRAME YOUR QUESTION
7 APPROPRIATELY SO THAT SHE CAN ANSWER IT SUCCINCTLY.

8 THE WITNESS: YES, SIR.

9 THE COURT: DON'T CALL ME "SIR."

10 THE WITNESS: DID I?

11 I'M SO SORRY. YES, YOUR HONOR, MA'AM.

12 Q. BY MR. AMER: MISS BIRCHARD, DID YOU EVER
13 MAKE ANY STATEMENTS ABOUT WANTING TO TAKE MR. TERHUNE'S
14 MONEY?

15 A. I MADE ONE -- WELL, CAN I SAY THIS? IT
16 SHOULDN'T BE --

17 THE COURT: YES OR NO?

18 THE WITNESS: YES; BUT NOT IN THE WAY HE'S
19 ALLEGING.

20 Q. BY MR. AMER: DID YOU EVER WRITE ON
21 FORGETTHE TALKIES -- AND I'M QUOTING HERE -- "AND I
22 EAGERLY AWAIT OWNING HIS COLLECTION AND TAKING ALL HIS
23 MONEY" --

24 A. YES --

25

26 (REPORTER REQUESTED MR. AMER AND MISS
27 BIRCHARD SLOW DOWN AND NOT TALK
28 SIMULTANEOUSLY.)

1
2 Q. BY MR. BIRCHARD: -- "I EAGERLY AWAIT
3 OWNING HIS COLLECTION AND TAKING ALL HIS MONEY FOR HIS
4 CRASS AND DOWNRIGHT SCARY BEHAVIOR"?

5 A. YES, I WROTE THAT. BUT IT WAS --

6 Q. THE QUESTION WAS --

7
8 (REPORTER REQUESTED MR. AMER AND MISS
9 BIRCHARD SLOW DOWN AND NOT TALK
10 SIMULTANEOUSLY.)

11
12 THE COURT: OKAY, FOLKS.

13 THE WITNESS: I'M SORRY. I'M NOT USED TO THIS.
14 I'M TRYING VERY HARD --

15 THE COURT: DO NOT SPEAK UNLESS YOU'RE ANSWERING A
16 QUESTION.

17 OKAY?

18 THE WITNESS: UH-HUH.

19 THE COURT: WHAT IS THE QUESTION, COUNSEL?

20 MR. AMER: I WAS JUST ASKING WHETHER OR NOT SHE
21 WROTE THAT SHE WAS LOOKING FORWARD TO TAKING HIS MONEY
22 AND OWNING HIS COLLECTION.

23 THE COURT: AND THE ANSWER WAS?

24 THE WITNESS: YES, BUT NOT IN THE WAY HE'S TRYING
25 TO MAKE ME OUT TO -- TO BE.

26 THE COURT: YOU'LL BE ABLE TO RESPOND TO THAT.

27 THE WITNESS: I'M SORRY?

28 THE COURT: YOU'LL HAVE AN OPPORTUNITY TO RESPOND.

1 Q. BY MR. AMER: MISS BIRCHARD, YOU CLAIM THAT
2 MR. TERHUNE FREQUENTLY VISITS YOUR WEB SITES?

3 A. YES.

4 Q. DO YOU HAVE ANY REASON OR ANY SPECULATION
5 AS TO WHY HE WOULD DO THAT?

6 A. BECAUSE HE'S OBSESSED WITH ME.

7 Q. OKAY.

8 DO YOU -- WHY DO YOU THINK HE'S OBSESSED
9 WITH YOU?

10 A. BECAUSE HE HAS AN OBSESSIVE HATRED THAT
11 BORDERS ON SOME PERSONALITY DISORDER. THOUGH I'M NOT A
12 DOCTOR, SO I CAN'T DO THAT. I MEAN, IT'S ONE THING TO
13 LOOK FOR NEW UPDATES; BUT MR. TERHUNE CONTINUALLY READS
14 THE SAME ARTICLES OVER AND OVER AGAIN.

15 Q. HAVE YOU EVER USED THE TERM "KING
16 KOOKIE"?

17 A. YES.

18 Q. WHO DO YOU REFER TO WHEN YOU SAY THAT?

19 A. THE KING OF ALL KOOKIES, MR. TERHUNE.

20 Q. WHAT DOES THE "KING OF ALL KOOKIES"
21 MEAN?

22 A. IT JUST MEANS THE GUY WHO LEADS THE
23 VALENTINO MEMORIAL SERVICE, WHICH IS GATHERING OF
24 KOOKIES.

25 Q. DO YOU KNOW HOW MANY TIMES YOU'VE REFERRED
26 TO HIM AS "KING KOOKIE"?

27 A. PROBABLY SEVERAL. THAT'S HOW I ALWAYS
28 REFER TO HIM BECAUSE I DON'T WANT TO GIVE HIM ANY POWER

1 BY USING HIS NAME.

2 Q. WOULD YOU AGREE THAT YOU'VE AT LEAST POSTED
3 OR WROTE A DOZEN, OR EVEN DOZENS, OF COMMENTS REGARDING
4 MR. TERHUNE?

5 A. I THINK THAT'S TOO VAGUE A QUESTION. IT'S
6 NOT ACCURATE BECAUSE --

7 WELL, FIRST, YOUR HONOR --

8 THE COURT: WAIT A MINUTE. WAIT A MINUTE. WAIT A
9 MINUTE. WAIT A MINUTE.

10 DO YOU UNDERSTAND THE QUESTION, YES OR NO?

11 THE WITNESS: NOT REALLY.

12 THE COURT: REPEAT THE QUESTION.

13 Q. BY MR. AMER: IN YOUR BEST ESTIMATE, HOW
14 MANY TIMES HAVE YOU WROTE OR POSTED ABOUT MR. TERHUNE IN
15 THE PAST YEAR?

16 A. THE DISTINCTION I WANT TO MAKE -- BECAUSE I
17 FEEL IT IS IMPORTANT -- IS YOU WANT TO INCLUDE ALL
18 REFERENCES TO "KOOKIE" OR ALL FORUM POSTINGS JUST WHERE
19 YOU'RE MAKING A --

20 THE COURT: MOVE TO STRIKE. THAT ANSWER IS NOT
21 RESPONSIVE.

22 AND YOU NEED TO MAKE THE PROPER OBJECTIONS.
23 OKAY. SO ASK THE QUESTION. AND IF SHE CAN ANSWER IT,
24 SHE WILL; AND IF SHE CAN'T, THEN SHE WON'T. AND LET'S
25 MOVE ON FOLKS. IT'S 11:00 O'CLOCK.

26 THE WITNESS: YES.

27 Q. BY MR. AMER: FROM DECEMBER OF 2009 UNTIL
28 TODAY, CAN YOU GIVE US AN ESTIMATE OF HOW MANY TIMES

1 YOU'VE REFERRED OR MENTIONED THE NAME "KING KOOKIE" OR
2 "TRACY TERHUNE" OR THE "KING OF ALL KOOKIES" ALL ON YOUR
3 WEB SITE?

4 THE COURT: WHAT IS THE RELEVANCE OF THAT WITH
5 REGARDS TO THE REQUEST FOR A CIVIL HARASSMENT RESTRAINING
6 ORDER?

7 MR. AMER: BECAUSE, YOUR HONOR, SHE THINKS THAT
8 HE'S GOING ON HER WEB SITES TO HARASS HER. BUT THE ONLY
9 REASON WHY HE'S GOING ON HER WEB SITES IS BECAUSE SHE'S
10 DEFAMING HIM, WRITING ALL THESE THINGS ABOUT HIM, CALLING
11 HIM THE KING OF ALL KOOKIES, MAKING VERY SPECIFIC --

12 THE COURT: IS THIS A OFFER OF PROOF YOU'RE
13 MAKING?

14 MR. AMER: YES.

15 THE WITNESS: COULD I MAKE --

16 THE COURT: NO.

17 MR. AMER: SO, WHAT I WOULD LIKE TO SAY, YOUR
18 HONOR, IS THAT THE REASON WHY MR. TERHUNE -- THE ONLY
19 REASON WHY HE'S GONE ON THE WEB SITE, THE ONLY REASON WHY
20 HE KNOWS OF HER, IS BECAUSE SHE IS ENGAGED IN A
21 SYSTEMATIC AND A CONTINUOUS PATTERN OF DEFAMING HIM --
22 AND NOT JUST HIM ALONE, A LOT OF OTHER PEOPLE -- CALLING
23 HIM KING KOOKIE, CALLING HIM VINDICTIVE, BULLYING,
24 ACCUSING HIM OF FRAUD.

25 AND THAT'S -- THAT'S WHAT WE'D LIKE TO --
26 THAT'S OUR OFFER OF PROOF.

27 THE COURT: DO YOU HAVE ANY OTHER QUESTIONS OF
28 THIS WITNESS? IF YOU DO, GO AHEAD. I'M NOT STOPPING

1 YOU. I JUST WANT TO HELP FOCUS BOTH --

2 MR. AMER: NO PROBLEM.

3 THE COURT: UH-HUH.

4 Q. BY MR. AMER: HAS MR. TERHUNE EVER CAME TO
5 YOUR HOUSE AS FAR AS YOU KNOW?

6 A. NOT THAT I KNOW OF. BUT HOW WOULD I KNOW,
7 YOU KNOW?

8 AND SOMEONE CAME TO SERVE ME FOR THE SMALL
9 CLAIMS COURT AND I WAS NOT HOME --

10 Q. MISS BIRCHARD --

11 OBJECTION. NONRESPONSIVE, YOUR HONOR.

12 THE COURT: SUSTAINED.

13 ASK A QUESTION --

14 THE WITNESS: OKAY --

15 THE COURT: HAS ANYONE -- HAS HE EVER COME TO YOUR
16 HOUSE?

17 NOT THAT YOU KNOW OF --

18 THE WITNESS: NOT TO MY KNOWLEDGE.

19 THE COURT: THANK YOU.

20 Q. BY MR. AMER: HAS HE EVER TRIED TO FOLLOW
21 YOU IN ANY WAY DURING ANY OF THE EVENTS?

22 A. YOUR HONOR, COULD I JUST ASK HOW WOULD I
23 KNOW ANY OF THIS UNLESS I HAD A PROVEN EVENT?

24 I CAN SAY I THINK HE HAS, BUT IT'S NOT
25 PROOF. I CAN'T PROVE IT.

26 Q. YOU UNDERSTAND YOU'RE BRINGING A SERIOUS
27 ALLEGATION AGAINST SOMEBODY, DON'T YOU --

28 A. YES. WELL --

1 THE COURT: MA'AM, HAS HE EVER TRIED TO FOLLOW YOU
2 THAT YOU KNOW OF?

3 THE WITNESS: I THINK --

4 THE COURT: DO YOU KNOW OF ANY OCCASION WHERE HE
5 TRIED TO FOLLOW YOU? YES OR NO?

6 THE WITNESS: I SUSPECT THE FEBRUARY 3RD THING HE
7 WENT BECAUSE HE KNEW I'D BE THERE. BUT I CAN'T PROVE IT.
8 SO MAYBE.

9 THE COURT: ANY OTHER TIMES?

10 THE WITNESS: LET ME THINK.

11 I WOULDN'T KNOW THE DATE, BUT I MEAN, AS I
12 SAID, HE KNEW ABOUT THE SIZZLER. SO I SUSPECT HE MAY
13 HAVE STAKED OUT MY NEIGHBORHOOD SOMEHOW. BECAUSE, I
14 MEAN, YES, YOU CAN GET THAT ONLINE, BUT YOU'D HAVE TO BE
15 VERY SPECIFIC LIKE THAT, YOU KNOW.

16 Q. BY MR. AMER: MISS BIRCHARD, LATE JANUARY,
17 2010, YOU RECEIVED A LETTER FROM MY LAW OFFICE, DID YOU
18 NOT?

19 A. YES.

20 Q. AND --

21 A. WELL -- SORRY. IT WAS IN EARLY FEBRUARY I
22 RECEIVED IT. BUT I KNOW THAT'S WHEN YOU WROTE IT.

23 Q. DO YOU KNOW, TO THE BEST -- DO YOU HAVE A
24 RECOLLECTION OF WHAT THAT LETTER ASKED YOU TO DO?

25 A. IT BASICALLY SAID -- IT'S A VERY
26 THREATENING LETTER. AND IT SAID IF I DID NOT REMOVE ANY
27 REFERENCES TO HIM OR ANYTHING HE PERCEIVES AS BEING ABOUT
28 HIM -- SUCH AS THE WORD "KOOKIE," WHICH DOES NOT ALWAYS

1 REFER TO MR. TERHUNE -- THAT I COULD AND PROBABLY WOULD
2 BE SUED IN COURT.

3 I CAN'T -- IT WAS VERY SPECIFIC. I'M SURE
4 IT'S IN EXHIBIT 5, I THINK, OR 4 --

5 MR. AMER: OBJECTION, YOUR HONOR.
6 NONRESPONSIVE.

7 THE WITNESS: HOW IS THAT NONRESPONSIVE?

8 Q. BY MR. AMER: DID THAT LETTER ALSO ASK YOU
9 TO REMOVE DEFAMATORY STATEMENTS REGARDING MR. TERHUNE?

10 A. I DON'T REMEMBER THE EXACT WORDING.

11 Q. DID IT HAVE SOMETHING TO THAT EFFECT?

12 A. IT SAID TO REMOVE POSTS ABOUT MR. TERHUNE
13 OR I WOULD BE SUED. THAT'S WHAT THE GIST WOULD BE.

14 Q. DID YOU REMOVE ANY OF THE CONTENTS AS A
15 RESULT OF THAT LETTER?

16 A. I HOPE THIS WON'T COUNT AS NONRESPONSIVE --
17 THE COURT: DID YOU REMOVE --

18 Q. BY MR. AMER: -- ANY CONTENTS REGARDING
19 MR. TERHUNE AFTER RECEIVING THAT LETTER?

20 A. NO, BECAUSE I WANTED TO SEEK MY OWN LEGAL
21 COUNSEL. THAT'S THE REASON.

22 Q. DID YOU EVER WRITE ANY BOOKS?

23 A. I HAVE WRITTEN, BASICALLY, ONE AND A HALF
24 IS WHAT I COUNT THAT AS.

25 WELL, AND I'M WRITING ANOTHER RIGHT NOW.

26 Q. AND DID YOU EVER GIVE ANY CREDITS TO YOUR
27 SISTER?

28 A. WHAT DO YOU MEAN?

1 ONE, THIS -- I FEEL THIS QUESTION DOESN'T
2 COUNT. I DON'T KNOW WHAT THE LEGAL --

3 MR. AMER: OBJECTION, YOUR HONOR. NONRESPONSIVE.

4 THE WITNESS: HE'S TRYING --

5 THE COURT: WAIT A MINUTE. THE OBJECTION IS
6 SUSTAINED.

7 I'M NOT GOING TO TAKE ANY MORE OF THIS
8 TESTIMONY FROM YOU. YOU'RE NOT FOLLOWING --

9 THE WITNESS: I'M SORRY. I'M JUST -- I'M NOT USED
10 TO IT.

11 THE COURT: WELL, YOU'RE GETTING USED TO IT. YOU
12 NEED TO FOLLOW THE DIRECTION OF THIS COURT --

13 THE WITNESS: WELL, HE --

14 THE COURT: SIMPLY -- MA'AM --

15 THE WITNESS: I'M SO SORRY. I'M VERY NERVOUS.

16 THE COURT: YOU DON'T NEED TO BE --

17 THE WITNESS: WELL, I MEAN, HE'S RIGHT THERE --

18 THE COURT: YOU NEED TO STOP TALKING.

19 WHAT IS THE QUESTION?

20 Q. BY MR. AMER: THE QUESTION WAS DID YOU EVER
21 GIVE ANY CREDITS IN YOUR BOOK TO YOUR SISTER?

22 A. IT'S NOT A CREDIT. SO NO. I'M GOING TO
23 SAY NO.

24 Q. DID YOU EVER MENTION YOUR SISTER IN YOUR
25 BOOK IN ANY WAY?

26 A. IN A THANK YOU.

27 Q. SO IS THE ANSWER YES?

28 A. IN A THANK YOU, YES. THAT'S WHEN I

1 MENTIONED HER.

2 Q. MISS BIRCHARD, WERE YOU AWARE THAT YOUR
3 NAME IS PUBLICLY LISTED AND YOUR ADDRESS?

4 A. NO. AND IT IS NOT. BUT I MEAN --

5 Q. SO YOU WERE NOT AWARE THAT IT IS?

6 A. IT IS NOT LISTED. NO, IT IS NOT LISTED.
7 I'M NOT UNAWARE; IT'S JUST NOT LISTED.

8 MR. AMER: ONE SECOND, YOUR HONOR.

9

10 (PAUSE IN THE PROCEEDINGS.)

11

12 Q. BY MR. AMER: I'M ALMOST DONE.

13 A. OKAY.

14 Q. YOU MENTIONED A MUTUAL FRIEND BY THE NAME
15 OF MR. I BELIEVE GASTON?

16 A. DAVID GASTON IS HIS ALIAS. HIS REAL NAME,
17 I BELIEVE, IS RYAN GASTON.

18 Q. AND HE SERVED AS MEDIATOR AT SOME POINT
19 BETWEEN YOU AND MR. TERHUNE.

20 IS THAT CORRECT?

21 A. I'M NOT SURE WHAT THIS HAS TO DO WITH THIS
22 CASE, BUT YES.

23 Q. OKAY. THAT'S ALL.

24 A. OKAY.

25 Q. MISS BIRCHARD, DO YOU UNDERSTAND THAT
26 YOU'RE MAKING A SERIOUS ALLEGATION TODAY?

27 A. YES.

28 THE COURT: THE QUESTION'S BEEN ASKED AND

1 ANSWERED.

2 Q. BY MR. AMER: AND YOU -- I'LL WITHDRAW
3 THAT.

4 NO MORE QUESTIONS, YOUR HONOR.

5 THE COURT: OKAY. THIS IS YOUR OPPORTUNITY TO
6 RESPOND TO SOME OF THE QUESTIONS THAT WERE ASKED OF YOU
7 SINCE YOU'RE REPRESENTING YOURSELF.

8 I KNOW THAT THAT'S DIFFICULT FOR YOU TO DO.
9 WHAT I'M GOING TO DO IS -- I SHOULD HAVE INQUIRED OF YOU
10 BEFORE -- MAYBE WE COULD MOVE THIS ALONG SINCE YOU'RE THE
11 MOVING PARTY. DO YOU HAVE ANY WITNESSES YOU NEEDED TO
12 CALL?

13 MS. BIRCHARD: YES, I DO.

14 THE COURT: AND WHO ARE THOSE WITNESSES?

15 MS. BIRCHARD: EVELYN ZEMAYA.

16 THE COURT: WHAT IS THE NATURE OF HER TESTIMONY?

17 MS. BIRCHARD: SHE WAS WORKING ON AN ARTICLE ABOUT
18 ME AND MR. TERHUNE AND SHE'S --

19 THE COURT: I BEG YOUR PARDON?

20 MS. BIRCHARD: SHE'S ALSO HAD CONTACT WITH
21 MR. TERHUNE.

22 THE COURT: DOES SHE HAVE ANY PERSONAL KNOWLEDGE
23 OF HAVING OBSERVED ANY OF THE CONDUCT THAT YOU ALLEGE BY
24 MR. TERHUNE DIRECTED TOWARDS YOU?

25 MS. BIRCHARD: YES. THE EMAIL IS, I BELIEVE, IN
26 EXHIBIT D.

27 I'M SORRY. I DON'T HAVE MY LIST WITH ME.
28 I'M NOT SURE THE EXACT EXHIBIT.

1 THE COURT: I'M GOING TO HAND YOU YOUR PACKET
2 BACK. AND I WANT YOU TO SHOW ME WHAT YOU'RE GOING TO
3 CALL THIS WITNESS TO TESTIFY TO.

4 MS. BIRCHARD: I'M SORRY?

5 THE COURT: SHOW ME WHAT YOU'RE GOING TO HAVE HER
6 TESTIFY TO.

7 COUNSEL, WHILE SHE'S DOING THAT I'LL ASK
8 YOU WHO ARE YOUR WITNESSES AND WHAT IS THE NATURE OF
9 THEIR TESTIMONY?

10 MR. AMER: JUST ONE WITNESS, YOUR HONOR, BESIDES
11 MR. TERHUNE. MR. JACK VANCE. HE WAS WITH MR. TERHUNE ON
12 THE EVENING OF FEBRUARY 3. AND HE'S GOING TO TESTIFY
13 THAT IT WAS HIS IDEA -- THAT MR. TERHUNE ONLY WENT TO THE
14 SCREENING BECAUSE HE'D CALLED HIM AND ASKED HIM TO GO
15 WITH HIM. SO IT SHOULDN'T BE A VERY LONG TESTIMONY.

16 MS. BIRCHARD: YOUR HONOR.

17 THE COURT: THANK YOU.

18 AM I MISTAKEN; WASN'T THE TESTIMONY OF THE
19 PLAINTIFF THAT IN FACT SHE DIDN'T SEE HIM ON FEBRUARY 3?

20 MS. BIRCHARD: YES.

21 THE COURT: YOU DID NOT SEE HIM --

22 MS. BIRCHARD: I DID NOT SEE HIM.

23 THE COURT: OKAY. YOU DON'T NEED HIM.

24 MR. AMER: BUT SHE ALSO CLAIMS THAT SHE THINKS HE
25 WENT THERE TO STALK HER.

26 MS. BIRCHARD: WELL, I --

27 THE COURT: WAIT A MINUTE. HE'S NOT ASKING YOU.

28 YOU MAY STEP DOWN.

1 MR. AMER: AND, ALSO, HE COULD TESTIFY AS TO
2 MR. TERHUNE'S CHARACTER, YOUR HONOR.

3 MS. BIRCHARD: AND, YOUR HONOR --

4 THE COURT: MA'AM?

5 MS. BIRCHARD: UH-HUH, THE OTHER WITNESS STATEMENT
6 I HAVE IS IN EXHIBIT F FROM AN ELAINE ARCHER. SHE COULD
7 NOT BE HERE TODAY, BUT SHE WISHES TO SUBMIT THAT.

8 THE COURT: ANY OBJECTION TO F?

9 MR. AMER: WE WERE JUST GIVEN THE EXHIBITS THIS
10 MORNING. I DON'T HAVE A COPY OF IT.

11 THE COURT: YOU DON'T HAVE A COPY?

12 MR. AMER: NO.

13 MS. BIRCHARD: I WAS NOT AWARE I HAD TO GIVE HIM A
14 COPY. SO, MY APOLOGIES.

15 MR. AMER: AND I HAVE TO STATE FOR THE RECORD THAT
16 WE HAD VERY LITTLE TIME TO REVIEW THEM --

17 THE COURT: WELL, I JUST READ IT, SO MAYBE YOU CAN
18 DO THE SAME.

19 COUNSEL, YOU NEED TO CALL YOUR FIRST
20 WITNESS BECAUSE YOU'RE RUNNING OUT OF TIME HERE.

21 MR. AMER: I'D LIKE TO CALL MR. TRACY TERHUNE.
22 I'M CALLING THE DEFENDANT.

23 ////////////////

24 ////////////////

25 ////////////////

26

27

28

1 TRACY TERHUNE,
2 CALLED AS A WITNESS ON HIS OWN BEHALF,
3 TESTIFIED AS FOLLOWS:
4

5 DIRECT EXAMINATION

6 BY MR. AMER:

7 Q. GOOD MORNING, MR. TERHUNE.

8 A. GOOD MORNING.

9 Q. MR. TERHUNE, CAN YOU PLEASE TELL THE COURT
10 WHETHER OR NOT YOU'RE EMPLOYED.

11 A. I AM EMPLOYED.

12 Q. AND WHERE DO YOU WORK?

13 A. AT UNIVERSAL CITY STUDIOS.

14 Q. AND HOW LONG HAVE YOU BEEN WORKING THERE?

15 A. 32 YEARS. IN DIFFERENT DEPARTMENTS.

16 Q. AND WHAT DO YOU DO THERE?

17 A. I'M IN FINANCE.

18 Q. HAVE YOU EVER BEEN ACCUSED OF HARASSMENT?

19 A. NO. NOT UNTIL NOW, NO.

20 Q. HAVE YOU EVER BEEN ACCUSED OF ANY CRIMINAL
21 BEHAVIOR?

22 A. NO.

23 Q. WERE YOU SERVED A REQUEST -- I MEAN --
24 SORRY. WERE YOU SERVED A COPY OF THE REQUEST TO PLACE A
25 RESTRAINING ORDER AGAINST YOU?

26 A. NO, I WAS NOT.

27 MS. BIRCHARD: OBJECTION. WE TRIED TO SERVE HIM.
28 THE SHERIFF'S OFFICE TRIED TO SERVE HIM. BUT MR. TERHUNE

1 HAD LEFT HIS APARTMENT NUMBER OFF. AND HE LIVES IN A
2 GATED COMPLEX AND WORKS IN A GATED STUDIO. SO WE WERE
3 UNABLE TO SERVE HIM.

4 THE COURT: THANK YOU.

5 THE RELEVANCE OF HIS SERVICE IS NOT BEFORE
6 US SINCE HE APPEARED AND HE'S HERE AND YOU'RE GOING
7 FORWARD, COUNSEL. HE OBVIOUSLY HAD NOTICE.

8 MR. AMER: OKAY. YEAH.

9 Q. WHEN DID YOU FIRST FIND OUT OR KNOW ABOUT
10 MISS KATIE BIRCHARD?

11 A. A FRIEND OF MINE, STELLA GRACE, AND I HAD
12 JOINTLY PURCHASED A DISPLAY CASE AND FILLED IT WITH
13 VALENTINO MEMORABILIA FROM OUR COLLECTIONS AT HOLLYWOOD
14 HERITAGE MUSEUM. I'M A DOCENT THERE. ON ONE OF MY TIMES
15 AS A DOCENT, GEORGE KIEL, WHO RUNS THE BAR, HAD MENTIONED
16 TO ME A GIRL WHO RAN THE WEB SITE HAD COME AND COMPLAINED
17 ABOUT THE CASE. AND I HAD NEVER HEARD OF HER. AND SO I
18 WENT ONLINE. AND -- FROM WHAT HE SHOWED ME. AND THAT'S
19 HOW I FIRST BECAME AWARE OF HER. AND, YOU KNOW, I READ
20 HER BLOG.

21 MS. BIRCHARD: CAN I OBJECT TO THIS?

22 THE COURT: NO.

23 JUST A MINUTE. WHEN WAS THAT?

24 THE WITNESS: I BELIEVE THIS WAS SOMEWHERE IN
25 2008, AUGUST -- AFTER WE -- WE UNVEILED IT I THINK IN
26 AUGUST, 2008. SO IT WOULD BE SOMETIME THEREAFTER.

27 THE COURT: I DON'T MEAN TO SAY NO YOU CAN'T
28 OBJECT. YES, YOU CAN OBJECT. BUT WHAT IS YOUR

1 OBJECTION?

2 MS. BIRCHARD: MY OBJECTION IS THAT THAT CAN'T BE
3 TRUE BECAUSE EVEN HIS OWN WRITING -- AND, ALSO, I NEVER
4 WROTE A ARTICLE LIKE THAT.

5 THE COURT: OKAY. THAT'S NOT A PROPER
6 OBJECTION.

7 MS. BIRCHARD: I'M SORRY. I'M NOT A LAWYER.

8 Q. BY MR. AMER: I'M SORRY. YOU SAID THAT WAS
9 WHEN?

10 A. IT HAD TO BE -- I DON'T KNOW THE EXACT
11 DATE. BUT SHE HAD POSTED PICTURES OF THE CONTENTS OF THE
12 EXHIBIT IN A -- AND SAID IT WAS RUBBISH AND NOT MUCH --

13 MS. BIRCHARD: I OBJECT BECAUSE I DID NOT WRITE
14 THAT --

15 THE COURT: OKAY. THE OBJECTION'S OVERRULED.

16 THE WITNESS: THAT WAS MY FIRST CONTACT.

17 Q. BY MR. AMER: I'M SORRY. MY QUESTION WAS
18 AROUND WHAT TIME THAT WAS.

19 A. IT WAS UNVEILED AT A PUBLIC EVENT IN
20 AUGUST, 2008. SO I DON'T KNOW EXACTLY WHEN SHE SAW IT.

21 Q. AND WERE THERE ANY SUBSEQUENT PUBLISHINGS
22 OR POSTING BY MISS BIRCHARD AGAINST YOU?

23 A. YES. SHE CONTINUED TO RAIL AGAINST MY
24 PROJECTS, MY BOOK. SHE HAD A WHOLE THING WHY THE
25 VALENTINO MEMORIAL SUCKS. THAT WAS THE HEADLINE. AND I
26 BELIEVE IT'S STILL THERE.

27 I NEVER WROTE TO HER. I NEVER COMPLAINED.
28 I NEVER DID ANYTHING. BUT I WAS AWARE OF IT.

1 Q. DID SHE DO -- DID SHE EVER WRITE OR POST
2 ANYTHING AGAINST YOU PERSONALLY?

3 A. YES. SHE --

4 MS. BIRCHARD: I OBJECT.

5 THE COURT: WHAT'S THE BASIS FOR YOUR OBJECTION?

6 MS. BIRCHARD: BECAUSE WHAT DOES IT HAVE TO DO
7 WITH THE CASE? IT SOUNDS LIKE THE DEFAMATION THING.

8 MR. AMER: YOUR HONOR, SHE CLAIMS HE GOES ON HER
9 WEB SITE.

10 THE COURT: OBJECTION OVERRULED.

11 GO AHEAD.

12 THE WITNESS: REPEAT THE QUESTION. I'M SORRY.

13 Q. BY MR. AMER: THE QUESTION WAS DID SHE EVER
14 WRITE OR PUBLISH ANYTHING AGAINST YOU?

15 A. YES. SHE HAD POSTED ON A WEB SITE SHE'S
16 REFERRED TO ALREADY, NIGHT -- I'M SORRY. BACK UP. ON
17 HER BLOG FORGETTHETALKIES.COM SHE HAD POSTED A VERY
18 NASTY, VINDICTIVE THING TOWARDS A FRIEND OF MINE, A
19 FELLOW VALENTINO COLLECTOR WHOSE NAME IS DONNA HILL --

20 MS. BIRCHARD: I OBJECT BECAUSE THAT'S NOT TRUE.

21 THE BAILIFF: YOU'RE NOT GOING TO INTERRUPT AGAIN.
22 LET HIM FINISH TALKING.

23 THE WITNESS: I POSTED A DEFENSE OF DONNA SAYING
24 THAT HALA HAD DISTORTED THE FACTS, TOLD HALF-TRUTHS AND
25 SO FORTH.

26 THE NEXT DAY ON HER BLOG SHE NOW SAID NOT
27 ONLY THAT DONNA HILL, WHO SHE HAD ATTACKED THE DAY
28 BEFORE, NOW SHE SAID DONNA HILL AND TRACY TERHUNE WERE

1 CONSPIRING AGAINST HER.

2 I'VE NEVER CONSPIRED AGAINST HER. I'VE
3 NEVER MET HER. EVEN TO THIS DAY I'VE NEVER MET HER OTHER
4 THAN HERE.

5 Q. BY MR. AMNER: AND CAN YOU JUST VERY
6 BRIEFLY TELL THE COURT WHAT -- OR HOW OFTEN MISS BIRCHARD
7 WOULD POST NEW THINGS ABOUT YOU.

8 A. WELL, IT WAS -- SHE QUICKLY DEEMED ME "KING
9 OF THE KOOKIES" AND USED THAT TERMINOLOGY IN A DEROGATORY
10 WAY. ANYTHING DEROGATORY SHE WOULD POST ABOUT ME. SHE
11 CALLED ME EVIL. SHE CALLED ME LOONY, DANGEROUS. I HAD
12 NEVER MET HER.

13 I HAD SO MANY PEOPLE INQUIRE, YOU KNOW, WHO
14 IS THIS PERSON SAYING ALL THIS ABOUT YOU. AND TO
15 DATE -- TO THAT DATE I HAD NEVER CORRESPONDED WITH HER,
16 DID ANYTHING.

17 SO SHE CONTINUED. AND THEY WERE LIES, THEY
18 WERE JUST MADE UP, COMPLETELY FABRICATED ALLEGATIONS.
19 COMPLETELY FABRICATED. I WAS STUNNED.

20 Q. DO YOU HAVE ANY REASON --

21 A. SHE DOESN'T LIKE THE VALENTINO MEMORIAL.
22 SHE EARLIER STATED IN HER TESTIMONY UP HERE THAT SHE MADE
23 A VERY SIMPLISTIC REVIEW OF MY BOOK. BUT, ACTUALLY, IN
24 TRUTH, SHE CALLED IT -- AND I'M QUOTING -- TACKY AND
25 TRASHY --

26 MS. BIRCHARD: I OBJECT BECAUSE THAT'S SERIOUSLY
27 NOT -- WHERE'S HIS PROOF OF THAT?

28 THE COURT: YOUR OBJECTION'S OVERRULED.

1 Q. BY MR. AMER: AND WERE YOU THE ONLY PERSON
2 THAT MISS BIRCHARD SORT OF ATTACKED OR --

3 A. NO. IF YOU READ HER BLOG, IT'S PEPPERED
4 WITH PEOPLE THAT SHE HAS ATTACKED. SHE ATTACKED A FELLOW
5 JOURNALIST, WHO I'M NOT FOND OF PERSONALLY --

6 THE COURT: OKAY. I'M GOING TO INTERRUPT HERE
7 BECAUSE THAT'S NOT RELEVANT.

8 THE WITNESS: OKAY.

9 MR. AMER: OKAY.

10 Q. SO MR. TERHUNE, WHY DID YOU GO -- OR DID
11 YOU AT ANY TIME GO AND VISIT MISS BIRCHARD'S WEB SITES OR
12 BLOGS?

13 A. I DID. AND THE THING WAS FOR MY OWN LEGAL
14 PROTECTION I HAD TO VISIT IT OFTEN BECAUSE SHE WOULD
15 ALTER AND CHANGE AND DELETE AND MOVE THINGS AND ADD
16 THINGS AND --

17 MS. BIRCHARD: I OBJECT BECAUSE THAT'S NOT TRUE.
18 THERE'S NO PROOF OF THAT. WHERE'S YOUR PROOF?

19 THE COURT: OKAY, YOUR OBJECTION'S OVERRULED.

20 I RULE ON WHETHER OR NOT THERE'S PROOF OF
21 SOMETHING.

22 Q. BY MR. AMER: MR. TERHUNE, SO YOU DID THAT
23 FOR YOUR OWN PROTECTION?

24 A. I BEGAN TO PRINT OUT HER STATEMENTS ABOUT
25 ME ON HER BLOGS, HER POSTS, HER -- SO FORTH. SO THAT'S
26 WHY I WOULD VISIT HER SITE, BECAUSE THEY CHANGED ALL THE
27 TIME. I'D GO ONE DAY AND I WOULD READ IT TO SOMEONE AND
28 I WOULD SAY "OH MY GOD, THIS WASN'T EVEN HERE YESTERDAY."

1 Q. DID YOU DO IT TO HARASS HER?

2 A. NO.

3 Q. DID YOU DO IT TO THREATEN HER?

4 A. NO.

5 Q. DID YOU DO IT IN ANY -- DID YOU HAVE ANY
6 INTENTIONS TO PERSONALLY HARM MISS BIRCHARD?

7 A. ABSOLUTELY NOT.

8 Q. HAVE YOU EVER -- BESIDES THE EMAIL THAT YOU
9 WROTE HER, HAVE YOU EVER HAD ANY CONTACT WITH HER?

10 A. NO.

11 Q. HAVE YOU EVER WENT TO HER HOUSE?

12 A. NO.

13 Q. HAVE YOU EVER APPROACHED HER IN ANY WAY,
14 SHAPE, OR FORM IN A THEATER OR ANY PUBLIC GATHERING?

15 A. NO.

16 Q. HAVE YOU EVER TOLD ANYBODY THAT YOU WANTED
17 TO HARM HER?

18 A. NO.

19 Q. NOW, ON THE EVENING OF FEBRUARY 3RD YOU
20 WENT TO THE MOVIE "FLAPPER"? THE SCREENING OF THE MOVIE
21 "FLAPPER"?

22 A. CORRECT.

23 Q. DID YOU AT THAT TIME ATTEMPT TO TALK TO OR
24 IN ANY WAY HARASS MISS BIRCHARD?

25 A. NO.

26 Q. OKAY.

27 BY THE WAY, DID YOU KNOW THAT THAT EVENT
28 WAS PUT ON BY HER OR WAS BEING HEAVILY PROMOTED BY HER?

1 MS. BIRCHARD: IT WASN'T PUT ON BY ME. I JUST
2 WANT TO MAKE NOTE OF THAT.

3 MR. AMER: I APOLOGIZE.

4 Q. DID YOU KNOW THAT THAT SCREENING WAS
5 HEAVILY PROMOTED BY HER?

6 A. NO.

7 Q. WAS IT --

8 A. SHE HAS A WEB SITE THAT SAYS "FLAPPERS." I
9 DON'T LOOK AT THAT. BUT I KNOW THAT SHE'S TRUTHFUL IN
10 WHAT SHE SAID ABOUT HAVING THAT SITE. IF SHE PROMOTED
11 THERE, IT ESCAPED MY ATTENTION.

12 MS. BIRCHARD: THAT'S --

13 Q. BY MR. AMER: SO, YOU DIDN'T GO THERE
14 BECAUSE YOU KNEW THAT SHE WOULD BE THERE OR -- WAS THAT
15 YOUR REASON FOR GOING?

16 A. NO. I WAS INVITED THERE. AND I HAD NO
17 IDEA WHERE SHE WOULD ATTEND ANYTHING. I HAD NO CLUE OF
18 THAT.

19 Q. NOW, YOU'VE MENTIONED THAT SHE'S POSTED ALL
20 THESE THINGS ABOUT YOU. DID YOU AT ANY TIME TRY TO
21 DIRECTLY CONTACT HER TO GET HER TO REMOVE THOSE
22 DEFAMATORY STATEMENTS ABOUT YOU?

23 A. NO.

24 Q. BUT YOU WROTE HER AN EMAIL; RIGHT?

25 A. I DID SEND HER THE EMAIL THAT STATED "SINCE
26 WE'VE NEVER MET OR SPOKEN, PLEASE ALLOW ME TO INTRODUCE
27 MYSELF. I'M THE PERSON YOU SLANDER ENDLESSLY ON YOUR
28 BLOGS" -- A PORTION SHE LEFT OUT WHEN SHE READ THAT

1 STATEMENT -- "AND PLEASE" -- I DIRECTED HER TO A WEB SITE
2 THAT -- I HAVE A WEB SITE THAT I HAD A PAGE UP "WHO IS
3 HALA PICKFORD?"

4 THAT'S ALL I DID. I DID NOT ATTACK HER
5 SISTER. I DID ATTACK HER OTHER THAN TO SAY "HERE'S WHAT
6 SHE SAID ABOUT ME OR MY PROJECTS AND HERE'S THE TRUTH."
7 THERE'S NOTHING THREATENING IN THERE AT ALL.

8 THE COURT: ARE YOU REFERRING TO THE EMAIL OF
9 12/25/09?

10 THE WITNESS: YES.

11 THE COURT: EXPLAIN TO ME WHEN YOU SAY "BY THE
12 WAY, IF YOU WANT ME TO MAIL YOU A COPY OF IT, I CAN
13 EASILY SEND IT TO 1141 SCREENLAND AVENUE, B, IN BURBANK
14 IF YOU'D LIKE," WHAT DOES THAT REFERENCE?

15 THE WITNESS: IN CASE SHE WANTED A PRINTOUT I
16 WOULD SEND IT TO HER THERE.

17 THE COURT: WHAT IS THAT ADDRESS?

18 THE WITNESS: THAT'S WHERE SHE LIVES.

19 THE COURT: HOW DO YOU KNOW THAT?

20 THE WITNESS: IT WAS ON 411.COM. IT'S PUBLIC
21 INFORMATION --

22 MS. BIRCHARD: I OBJECT BECAUSE THERE ISN'T A DATE
23 ON THAT. HE COULD HAVE JUST SUBMITTED THAT TO THAT WEB
24 SITE. THERE'S NO PROOF THAT THAT'S NOT SELF-SUBMITTED.

25 THE COURT: OBJECTION'S OVERRULED.

26 Q. BY MR. AMER: MR. TERHUNE, DOES MISS
27 BIRCHARD WRITE IN THE NAME OF KATIE BIRCHARD?

28 A. NO, SHE DOES NOT.

1 Q. WHOSE NAME DOES SHE WRITE?

2 A. SHE USES A FICTITIOUS NAME CALLED HALA
3 PICKFORD. AND THAT'S WHY I -- I POSTED "WHO IS HALA
4 PICKFORD," AND I EXPLAINED THE LIES SHE SAID ABOUT ME.

5 Q. NOW, YOU -- SHE CLAIMED THAT YOU SAID
6 SOMETHING ABOUT A SIZZLER. HOW DO YOU KNOW THERE'S A
7 SIZZLER NEXT TO HER HOUSE?

8 A. I WAS BORN IN BURBANK AND I LIVED JUST TWO
9 BLOCKS AWAY FROM THERE. SO I'M VERY FAMILIAR WITH THE
10 AREA. I LIVED ON HOLLYWOOD WAY. AND I'VE EATEN THERE.

11 THE COURT: ANYTHING ELSE, COUNSEL?

12 MR. AMER: I THINK THAT'S IT, YOUR HONOR.

13 THE COURT: CROSS-EXAMINATION.

14 MS. BIRCHARD: OKAY.

15 THE COURT: YOU HAVE FIVE MINUTES.

16 MS. BIRCHARD: OKAY.

17

18 **CROSS-EXAMINATION**

19 **BY MS. BIRCHARD:**

20 Q. SO, IF YOU'RE NOT THREATENING ME, THEN WHY
21 DIG UP MY ADDRESS, WHY DIG UP MY LEGAL NAME?

22 A. I'M SORRY. CAN YOU REPEAT THAT --

23 Q. IF YOU'RE NOT HARASSING ME OR THREATENING
24 ME, WHY DID YOU NEED MY LEGAL NAME, WHY DID YOU NEED MY
25 HOME ADDRESS, AND WHY DID YOU NEED TO MAKE ME AWARE YOU
26 HAD IT?

27 THE COURT: THAT'S THREE QUESTIONS. WHAT'S THE
28 FIRST QUESTION?

1 Q. BY MS. BIRCHARD: OKAY. FIRST OFF, IF YOU
2 SAY THAT MY INFORMATION IS PUBLIC, THEN HOW DID YOU GET
3 MY LEGAL NAME?

4 A. IT WAS ON THE ABSCAM -- I DON'T KNOW IF I'M
5 PRONOUNCING THAT RIGHT. THE MUSIC WHERE YOU POSTED YOUR
6 SONGS.

7 Q. HOW DID YOU GET TO THAT? THAT'S HALA
8 KITTY. THAT'S NOT HALA PICKFORD. HOW DID YOU GET TO
9 THAT POINT?

10 A. BECAUSE YOU HAVE A LOT OF BLOGS ON HALA
11 KITTY THAT REDIRECT.

12 Q. NO, I DON'T --

13 THE COURT: OKAY. THAT'S THE QUESTION. THERE'S
14 THE QUESTION; THERE'S THE ANSWER.

15 NEXT QUESTION.

16 Q. BY MS. BIRCHARD: OKAY. THE QUESTION: HOW
17 DID YOU GET FROM HALA PICKFORD TO HALA KITTY?

18 A. WELL, LET ME TELL YOU. FIRST OF ALL, YOU
19 MAKE IT SOUND LIKE I FOUND THAT OUT. ACTUALLY --

20 Q. I'M JUST ASKING --

21 BAILIFF: YOU NEED TO LET HIM FINISH THE QUESTION.
22 OKAY?

23 THE WITNESS: THERE IS A PERSON WHO BELONGS TO A
24 YAHOO WEB SITE THAT I AM ALSO OVERSEER OF; AND SHE -- SHE
25 WAS SO OFFENDED BY WHAT HALA HAD SAID ABOUT ME AND DONNA
26 HILL, WHO IS THE PERSON I WAS DEFENDING HER WHEN SHE
27 TURNED AROUND AND STARTED ATTACKING ME, THAT SHE
28 HERSELF -- SHE WORKS IN THE LIBRARY IN THE MIDWEST -- AND

1 SHE PULLED THAT INFORMATION UP AND SAID, "HERE'S THIS
2 GIRL, THIS IS WHO SHE REALLY IS."

3 SHE GOT IT FROM YOUR -- YOU TIPPED IT OFF
4 TODAY -- THE PAY PAL ACCOUNT. SHE BOUGHT ONE OF YOUR
5 BOOKS. IT SAID BIRCHARD. AND SHE WENT AND STARTED GOING
6 FROM THERE AND SHE BACKTRACKED. SHE FOUND IT AND
7 PRESENTED IT TO ME.

8 THE COURT: NEXT QUESTION.

9 Q. BY MS. BIRCHARD: SO WHY DID YOU SAY IT WAS
10 PUBLIC INFORMATION?

11 THE COURT: NO, THAT'S NOT A PROPER QUESTION. HE
12 ANSWERED THE QUESTION --

13 Q. BY MS. BIRCHARD: SO, DO YOU KNOW A MICHAEL
14 YAKENTOSS?

15 A. IT'S MICHAEL -- YES, I DO. YES.

16 Q. BUT YOU NEVER HAD A DISCUSSION WITH MICHAEL
17 YAKENTOSS ABOUT ME?

18 A. HE IS AWARE OF YOU, YES, BECAUSE YOU HAD
19 POSTED ONLINE A DVD THAT WAS COPYRIGHTED BY HIM AS A GIFT
20 TO HAND OUT AS A PRIZE AND HE OBJECTED TO THAT.

21 THE COURT: THAT'S THE ANSWER.

22 NEXT QUESTION.

23 Q. BY MS. BIRCHARD: SO YOU DID NOT OBTAIN MY
24 HOME ADDRESS FROM MICHAEL YAKATAS?

25 A. HE DID PROVIDE THAT AS WELL.

26 Q. OKAY --

27 THE COURT: NEXT QUESTION.

28 Q. BY MS. BIRCHARD: AND, I MEAN, IF YOU'RE

1 NOT THREATENING ME OR MY FAMILY, THEN HOW DID YOU FIND MY
2 SISTER'S NAME? CONVERSATIONS WITH RUDOLPH, IT WAS NOT
3 SHIPPED UNTIL MID DECEMBER. SO WHAT? YOU BOUGHT THAT
4 AND YOU'RE, LIKE, "ABBEY BIRCHARD." HOW DID YOU GET
5 ABBEY NICOLE BIRCHARD?

6 A. BECAUSE THE SAME PERSON IN THE MIDWEST WHO
7 IS INVESTIGATING YOU -- AND I MIGHT ADD I DID NOT REQUEST
8 HER TO DO THIS AND I WAS SURPRISED WHEN SHE PRESENTED ME
9 WITH THAT MATERIAL BUT NONE OF IT WAS OFFENSIVE. BUT
10 ANYWAYS, SHE, THROUGH FACEBOOK AND YOUR FRIENDS LIST,
11 FOUND YOUR SISTER THERE AND SAID "HERE SHE IS."

12 Q. MY -- OKAY. WELL, QUESTION. THEN WHY DID
13 YOU FEEL THAT WAS APPROPRIATE TO PUT ON A WEB SITE IN BIG
14 BOLD LETTERS A 14-YEAR-OLD'S NAME?

15 THE COURT: NO. NOT RELEVANT.

16 NEXT QUESTION.

17 Q. BY MS. BIRCHARD: IF YOU'RE -- IF YOU -- IF
18 YOU FIRST BECAME AWARE OF ME THROUGH, AS YOU CLAIMED,
19 ABOUT AUGUST, 2008, FOR A BLOG I NEVER WROTE, WHY DID YOU
20 SAY IN AN EMAIL TO A MISS EVELYN ZEMAYA THAT YOU'VE BEEN
21 WATCHING ME FOR 2 YEARS?

22 A. WELL, WHEN WAS -- THAT EMAIL TO EVELYN WAS
23 WRITTEN A COUPLE MONTHS AGO. IT'S 2008. THIS IS 2010.
24 SO THAT'S 2 YEARS TO ME.

25 Q. I KNOW --

26 A. DID I SAY WATCHING YOU FOR 2 YEARS --

27 Q. I BELIEVE YOU DID --

28 A. CAN YOU QUOTE THAT TO ME, PLEASE, BECAUSE I

1 DON'T BELIEVE I USED THAT PHRASE.

2 Q. "I HAD WATCHED FOR ALMOST 2 YEARS AS SHE
3 SMEARED THE VALENTINO MEMORIAL OVER AND OVER IN PRINT".

4 A. BUT THAT WAS NOT WATCHING YOU PER SE IN A
5 STALKING WAY --

6 Q. I'M ONLY ALLOWED TO ASK QUESTIONS --

7 A. -- I WAS WATCHING WHAT YOU WERE WRITING
8 ABOUT MY PROJECTS, MY BOOKS. AND THAT'S TRUE.

9 Q. OKAY, THEN. OKAY. AND, SO, IF YOU'RE NOT,
10 YOU KNOW, HARASSING ME AND STALKING ME AND WHATNOT, THEN
11 WHY WOULD YOU SAY TO EVELYN, EVELYN WHO WROTE YOU JUST
12 LIKE A PARAGRAPH: QUESTION, THAT -- LET'S SEE HERE. I
13 WANT TO MAKE SURE I GET THE QUOTE RIGHT. LET'S SEE. YOU
14 HAVE TO GIVE ME A SECOND. IT'S A BIT LONG.

15 OH. "MY GOAL IN DOING THAT WAS ONLY TO LET
16 PEOPLE KNOW" -- "DOING THAT" REFERRING TO HIS POST ON THE
17 WEB SITE -- "WAS ONLY TO LET PEOPLE KNOW THIS IS A
18 DISTURBED GIRL AND SHE HAS LATCHED ONTO RUDOLPH VALENTINO
19 AS HER DRUG OF CHOICE FOR THE MOMENT. SHE COMES IN,
20 PICKS OUT" --

21 THE COURT: YOU'RE TALKING TOO FAST.

22 MS. BIRCHARD: I'M SORRY. I'LL JUST START FROM
23 THE BEGINNING.

24 Q. "MY GOAL IN DOING THAT WAS ONLY TO LET
25 PEOPLE KNOW THIS IS A DISTURBED GIRL AND SHE IS -- WHO
26 HAS LATCHED ONTO RUDOLPH VALENTINO AS HER DRUG OF CHOICE
27 FOR THE MOMENT. SHE COMES IN, PICKS OUT KEY PEOPLE IN
28 THE PARTICULAR FILM -- IN THIS CASE VALENTINO -- AND

1 BEGINS TO SLING MUD, BLATANTLY FALSE AND MALICIOUS
2 INSINUATIONS." AND IT JUST KIND OF GOES ON FROM THERE.

3 SO WHY WOULD YOU BE TELLING PEOPLE WHO
4 ASKED YOU ONE PARAGRAPH THIS IF YOU NOT OBSESSED WITH ME
5 AND JUST ARE CONSTANTLY "GOT TO GET RID OF THIS HALA
6 GIRL"?

7 A. FIRST -- A COUPLE OF THINGS. FIRST, I
8 NEVER SAID, "WE HAVE TO GET RID OF THIS HALA GIRL" --

9 Q. GENERALIZING THERE.

10 A. WELL, YOU PUT THAT OUT THERE. AND I NEVER
11 SAID THAT. I HAVE NEVER, EVER ONCE SPOKEN AGAINST YOUR
12 PROJECTS --

13 Q. YES, YOU HAVE. YOU SAID I STEAL MONEY --

14 A. NO, I HAVEN'T --

15 THE COURT: MISS TERHUNE -- I BEG YOUR PARDON.

16 THE WITNESS: TO ANSWER YOUR QUESTION WHY I
17 RESPONDED TO EVELYN WHERE SHE ASKED ME AND IF -- HER
18 LETTER, WHICH I DON'T HAVE IN FRONT OF ME TO READ, BUT IT
19 SAID SOMETHING TO THE EFFECT OF I WAS THINKING OF DOING
20 AN ARTICLE ON HALA AND SOMEBODY POINTED ME TO YOUR SITE.
21 SHE MADE IT SOUND LIKE SHE HAD SECOND THOUGHTS IN REGARDS
22 TO CONNECTING WITH YOU.

23 I BELIEVED HER AT FACE VALUE AND I WANTED
24 TO LET HER KNOW IF -- SHE NEEDS TO KNOW THE FACTS OF WHAT
25 YOU'VE DONE TO ME, TO THE PROJECTS AND SO FORTH. NONE OF
26 THAT WAS EVER SAYING I WOULD THREATEN YOU, STALK YOU, OR
27 DO ANYTHING TO YOU.

28 Q. NOT --

1 A. I --

2 Q. WELL, MY QUESTION IS --

3 A. THEN SHE FOLLOWED UP WITH A LETTER BACK
4 SAYING "WHAT THREAT DOES SHE POSE TO YOU?"

5 AND I CEASED ALL COMMUNICATION WITH HER
6 BECAUSE I COULD SEE SHE WAS -- SHE WASN'T WHAT SHE
7 APPEARED TO BE.

8 Q. WELL, THAT'S NOT RELEVANT HERE. I GUESS I
9 COULD, BUT I WON'T.

10 AND IF YOU'RE NOT A THREAT TO ME, THEN WHY
11 DID YOU TELL A MR. DAVID -- DAVID GASTON THAT YOU HAD --
12 THERE'S WAS AN ANTI-HALA COALITION AND YOU FELT SORRY FOR
13 ME OVER IT, THERE WERE PEOPLE WHO WANTED HER TO QUIT
14 WRITING AND THEY'D SEE TO IT. THIS WAS ON CHRISTMAS DAY.

15 A. I HAD SEVERAL HOURS OF CONVERSATION WHICH
16 HE CALLED ME AND SAID HE WAS CALLING AS A INTERCESSORY ON
17 YOUR BEHALF. AND I SAID, "IF SHE'LL TAKE EVERYTHING DOWN
18 ABOUT ME I'LL TAKE THE ONE PAGE DOWN ABOUT HER."

19 AND ALL MY PAGES ARE "WHO IS HALA?" I
20 NEVER CALLED HER NAMES OTHER THAN --

21 MS. BIRCHARD: OBJECTION. IT DIDN'T ANSWER THE
22 QUESTION.

23 THE WITNESS: REPEAT THE QUESTION PLEASE.

24 THE COURT: YEAH. REPEAT THE QUESTION.

25 Q. BY MS. BIRCHARD: MY QUESTION WAS IF YOU'RE
26 NOT A THREAT TO ME AND IF YOU'RE NOT OBSESSED WITH ME,
27 WHY WOULD YOU TELL MR. DAVID GASTON ON THE PHONE THERE'S
28 A ANTI-HALA COALITION AND YOU FELT SORRY FOR ME OVER IT?

1 YOU DIDN'T NECESSARILY SAY YOU WERE
2 INVOLVED; BUT YOU KNEW A LOT ABOUT IT.

3 A. NO. I MADE IT CLEAR TO DAVID THAT I WAS
4 NOT PART OF ANYTHING. AND I DID NOT CALL IT A "ANTI-HALA
5 COALITION." I SAID --

6 MR. AMER: OBJECTION. SHE'S NOT LETTING HIM
7 FINISH THE ANSWER.

8 Q. BY MS. BIRCHARD: I'M SORRY. FINISH.

9 A. I TOLD HIM THERE WERE DARKER FORCES AGAINST
10 YOU AS FAR AS IN THE VALENTINO COMMUNITY THAN ME AND I
11 HAD NOTHING AGAINST YOU. AND I TOLD HIM AND IT WAS IN
12 THE EMAIL THAT I PLANNED TO BUY YOUR BOOK. DOES THAT
13 SOUND LIKE I'M AGAINST YOU?

14 Q. SO WHY DO YOU FEEL, I GUESS, THAT THE THREE
15 ARTICLES YOU PUT UP GIVING MY PERSONAL INFORMATION -- WHY
16 DO YOU FEEL IT WAS RELEVANT AND JUSTIFIED IF I WAS REALLY
17 THIS HORRIBLE, DEFAMING MONSTER, THAT IT'S A-OKAY TO PUT
18 UP MY FULL LEGAL NAME, MY SISTER'S FULL LEGAL NAME, MY
19 USER NAMES ON FORUMS THAT HAVE NOTHING TO DO WITH SILENT
20 FILM OR YOURSELF OR DONNA OR ANYONE? WHY WOULD YOU --
21 WHY WAS THAT OKAY I GUESS IS MY QUESTION --

22 A. FIRST OF ALL, THE NAME OF THE PAGE WAS "WHO
23 IS HALA PICKFORD?"

24 THERE IS NO HALA PICKFORD. YOU ARE NOT
25 HALA PICKFORD. YOU ARE KATIE LYNN BIRCHARD. SO THE
26 ARTICLE WAS "WHO IS HALA PICKFORD?"

27 "KAITLIN BIRCHARD."

28 FOR THE FIRST TIME, YOU WERE ATTACKING

1 PEOPLE, INCLUDING MYSELF, IN PRINT AND HIDING BEHIND A
2 FICTITIOUS NAME. I KEPT GETTING EMAILS "WHO IS THIS GIRL
3 THAT'S SAYING THIS ABOUT YOU? SHE'S TAKING ON CINECON,
4 SHE'S GOING AFTER THIS PERSON." ALL I DID BY USING YOUR
5 OTHER ALIASES THAT YOU HID THEM, HALA KAMORA, HALA
6 KITTY --

7
8 (MULTIPLE PEOPLE SPEAKING SIMULTANEOUSLY.)
9

10 THE WITNESS: -- THAT WAS MY REASON TO SAY THE
11 NAME OF THE ARTICLE, "WHO IS HALA PICKFORD?"

12 THERE IS NO HALA PICKFORD.

13 Q. BY MS. BIRCHARD: I WOULD JUST LIKE TO
14 POINT OUT RUDY VALENTINO WAS NOT RUDY VALENTINO. BUT --
15

16 (MULTIPLE PEOPLE SPEAKING SIMULTANEOUSLY.)
17

18 THE BAILIFF: YOU GUYS NEED TO LET THE COURT
19 REPORTER TAKE ONE PERSON AT A TIME. DO NOT TALK OVER
20 EACH OTHER AGAIN.

21 MS. BIRCHARD: MY APOLOGIES.

22 Q. IF THIS IS THE CASE THERE'S JUST THIS HALA,
23 WHY PUT IT UP THERE? WHY IS THAT STILL RIGHT? WHY IS IT
24 RIGHT TO PUT ME AND MY SISTER'S FULL LEGAL NAME IN ALL
25 THAT?

26 A. PUTTING YOUR SISTER'S NAME -- ALL IT SAID
27 IS ABBEY BIRCHARD --

28 Q. NO. IT SAID ABBEY NICOLE BIRCHARD --

1 A. ABBEY NICOLE BIRCHARD SAID HALA KITTY
2 WAS -- WENT BY HALA NOW. SHE GOES BY HALA NOW. BUT YOU
3 NEVER DID THAT. YOU TURNED AROUND AND SAID I ATTACKED
4 YOUR 14-YEAR-OLD SISTER. I DIDN'T KNOW HER AGE UNTIL YOU
5 ANNOUNCED IT ONLINE. THERE WAS NO INTENT TO ATTACK YOUR
6 SISTER. THERE IS STILL NO INTENT. THERE WAS NO INTENT
7 TO ATTACK YOU.

8 Q. MY QUESTION IS IF THERE WAS NO ATTEMPT TO
9 ATTACK MY SISTER OR MYSELF THEN WHY PUT IT THERE? WHY
10 NOT SAY --

11 A. I DID. I TOOK IT DOWN WITHIN A SHORT TIME.
12 ACTUALLY, THE WHOLE PAGE WAS UP THERE PROBABLY A TOTAL OF
13 NO MORE THAN TWO WEEKS --

14 Q. ACTUALLY, I OBJECT TO THAT BECAUSE YOU --
15 YOU LOOKED IT UP ABOUT -- YOU TOOK IT DOWN WHEN DAVID
16 REQUESTED IT. BUT THEN YOU PUT IT BACK UP IN A NEW FORM
17 AND KEPT IT UP IN ITS THREE FORUMS FOR ABOUT A MONTH.

18 THE COURT: LAST QUESTION.

19 MS. BIRCHARD: LAST QUESTION, YOUR HONOR.

20 Q. I MEAN, I GUESS MY LAST QUESTION IS WHY DO
21 YOU FEEL IT'S A APPROPRIATE FOR A 52-YEAR-OLD MAN TO GO
22 AND PUT ALL THIS STUFF ABOUT A 22-YEAR-OLD --

23 MR. AMER: OBJECTION, YOUR HONOR.

24 THE COURT: LET HER FINISH HER QUESTION.

25 Q. BY MS. BIRCHARD: -- A 22-YEAR-OLD GIRL
26 ONLINE? I MEAN, JUST WHY DO YOU FEEL THAT THAT'S
27 APPROPRIATE? I JUST DON'T UNDERSTAND.

28 A. BECAUSE YOU -- ALL I DID IS PUT YOUR NAME